STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
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The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,
Plaintiffs,
vs. File No. C1-94-8565
Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown
& Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,
Defendants.
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TRANSCRIPT OF PROCEEDINGS
VOLUME 15, PAGES 2877 - 3126
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P R O C E E D I N G S.

THE CLERK: All rise. Ramsey County District Court is again in session, the Honorable Kenneth J. Fitzpatrick now presiding.

(Jury enters the courtroom.)

THE CLERK: Please be seated.

THE COURT: Good morning.

(Collective "Good morning.")

THE COURT: Counsel.

MR. CIRESI: Thank you, Your Honor. Good morning, ladies and gentlemen.

(Collective "Good morning.")

MR. CIRESI: Mr. Merryman.

(Witness resumes the stand.)

THE CLERK: Mr. Merryman, could you please remain standing and raise your hand.

(Witness resworn.)

THE CLERK: Please state your name for the record.

THE WITNESS: Walker Merryman.

BY MR. CIRESI:

Q. Good morning, Mr. Merryman.

A. Good morning.

Q. Can you direct your attention once more to Exhibit 14452, which is in volume one in the two

volumes in front of you.

A. All right.

Q. You'll recall when we recessed Friday we were

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asking you questions concerning the ability of the drug companies to manipulate nicotine and to keep proprietary information that may relate to that issue. Do you recall where we were when we recessed?

MR. BLEAKLEY: Objection, Your Honor. First he said "drug companies;" I think he may have misspoken.

MR. CIRESI: Well it was a Freudian slip.

Q. Cigarette companies. Do you recall where we were?

A. Yes, sir. We were talking about the tobacco companies, yes, sir.

Q. Okay. And you recall where we were in the testimony?

A. Yes, I believe I do.

Q. Now this press release which was issued on March 25th, 1994, related to testimony that a Charles Whitley provided to Congress; correct?

A. It summarized testimony from Mr. Whitley and two scientists, yes, sir.

Q. And specifically addressing Mr. Whitley, did he testify in front of Congress on that day?

A. Mr. Whitley did testify before a congressional subcommittee, yes, sir.

Q. And did the subject matter of his testimony concern whether or not the FDA would regulate tobacco as a drug?

A. Can I just read the document, sir, just --

Q. Certainly.

A. -- take a moment to do that?

Q. Look at the bottom two paragraphs, it might help you.

A. Yes.

All right, I've read that.

Q. Is your answer yes?

A. Would you repeat the question?

Q. Was the subject matter of his testimony the regulation by the FDA of tobacco as a drug?

A. Yes, sir.

Q. Have you testified in front of Congress on behalf of The Tobacco Institute?

A. I have, sir.

Q. When you testify, you obtain information from the member companies of The Tobacco Institute; correct?

A. Yes, sir.

Q. You prepare yourself for testimony; correct?

A. Yes, sir.

Q. You intend to provide the full truth; correct?

A. I certainly intend to provide as -- as much information as possible in my statement and in response to questions from the members of Congress. I don't know if that ends up being the full truth.

Q. Do you intend to provide the full truth on the issues that you're asked about?

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A. I certainly try to.
Q. That's your purpose; correct, sir?
A. Yes, sir.
Q. That would be Mr. Whitley's purpose when he's speaking on behalf of The Tobacco Institute; correct?
A. With respect to an issue that he's addressing, I assume that he would want to provide the full truth as he understood it and knew it.
Q. The tobacco industry in 1994 was resisting attempts by the FDA to regulate it as a drug; correct?
A. The -- the tobacco industry was opposed to attempts to regulate cigarettes as drug-delivery devices, yes, sir.
Q. And you undertook to make representations to the public with respect to that issue during that period of time; correct?

A. Yes, we did, particularly when asked to do so by the news media.
Q. Well you not only did it when you were asked to do so by the media, you unilaterally provided information to the public; didn't you, sir?
A. This was a matter of some controversy, and certainly we hoped the public would be interested in our perspective. Certainly, yes, sir.
Q. So that you, on your own volition on behalf of the industry, disseminated information on that subject; correct?
A. We disseminated the industry's perspectives, certainly, on this subject and others, we certainly did.
Q. Did you intend to convey the truth when you disseminated that information as the industry knew it regarding that subject?
A. Certainly we intended to distribute truth, facts, information as we knew it, yes, sir.
Q. Did you ask any of the member companies for their information in their files with respect to whether they considered a cigarette a drug-delivery system?
A. I did not personally, no, sir.
Q. Did you ask anyone at The Tobacco Institute to

obtain such information from the defendants?
A. I did not, no, sir.
Q. Did anyone at The Tobacco Institute, to your knowledge, ask for that information?
A. I have no knowledge of that, no, sir.
Q. Did you have any discussion with anyone in The Tobacco Institute with regard to whether we shouldn't get that type of information from the drug -- or from the tobacco companies?
A. We certainly discussed the issue within The Tobacco Institute about what constituted a drug-delivery device, and it was the information we received that the companies did not consider a

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cigarette to be such a device, and that was the information that we gave to the public and to members of Congress.
Q. You received that information from the companies, sir?
A. Yes, sir.
Q. You received it from Philip Morris?
A. Our member companies, including Philip Morris --
Q. Did you receive it from R. J. Reynolds?
A. -- gave us that information.
Q. I'm sorry. I missed --
A. Correct.

Q. I'm sorry, I interrupted you.
A. R. J. Reynolds is a member, and yes, they would have given us that information, yes.
Q. Brown & Williamson, did they give you that information?
A. Brown & Williamson is a member of the Institute. They would have given us that information.
Q. Did American Tobacco at that time give you that information?
A. American Tobacco, I believe, was a member of the Institute at that time. They would have given us that information.
Q. Did Liggett give you that information at that time?
A. I believe they were a member in 1994 and they would have given us similar information, yes, sir.
Q. So that every one of the members of The Tobacco Institute who are defendants in this case told you at that time that a cigarette is not a drug-delivery system; correct?
A. Yes, sir, that's my information.
Q. Did you talk to any scientists within the company?
A. No, sir, I don't typically talk to scientists.
Q. Did you talk to anyone yourself within the

companies regarding that issue, you personally?
A. I don't know if I personally did. There were others at the Institute who were -- who were responsible directly for that issue at that time.
Q. But they talked to the lawyers; didn't they, sir?
A. Oh, I suppose on occasion you'd talk to lawyers to make sure what you're saying is accurate.
Q. Didn't the information that you obtained with regard to that subject come from the lawyers and not the companies?
A. Well certainly any information that we give to the public on behalf of our members comes from our members. Certainly we talk to lawyers as well to make certain what we're saying is accurate. That's why we ask our attorneys to look at news releases to make certain they're accurate.
Q. That wasn't my question, Mr. Merryman.

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At that time, didn't you obtain the information from the lawyers and not the companies? "Yes" or "no."
A. No, it's my -- it's my recollection that this information comes from the companies, sir.
Q. Did it come from the companies through the lawyers, if you know?

A. It may have. I don't know.
Q. Isn't it a fact that when you obtain external-source information regarding smoking and health, you obtain it from Shook, Hardy & Bacon, a law firm?
A. Some information comes from law firms, but we certainly evaluate external-source information ourselves and have prepared on our own information on a wide variety of issues, including smoking and health.
Q. Do you obtain smoking-and-health information from the law firm of Shook, Hardy & Bacon? "Yes" or "no."
A. Yes, on occasion.
Q. And in 1994 did you obtain the information from that law firm with regard to whether or not a cigarette is a drug-delivery device?
A. We may have received some information from that law firm in 1994. I don't recall specifically what it may have been or how much, if we did.
Q. Did you obtain any information from LRD at that time regarding the cigarette as a drug-delivery device?
A. LRD?
Q. Yes.

A. I don't know what that is.
Q. Do you know that as a division of CTR?
A. No, sir, I don't.
Q. Never heard of it.
A. I don't believe so. LR -- LRD?
Q. Correct.
A. No.
Q. Have you ever heard of L. S. Inc.?
A. L. S. --
Q. Inc.
A. No. No, sir.
Q. Okay. Now Shook, Hardy has compiled industry documents for decades; have they not?
A. They've represented tobacco companies for decades. That's certainly a fair statement, sir.
Q. And you have obtained documents from that firm for decades with regard to smoking-and-health issues; correct?
A. Well on occasion, certainly, they will provide us with documents from the scientific literature. That's what I remember.
Q. Now can you direct your attention, Mr. Merryman, to Exhibit 13155.

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A. All right.
Q. This is an RJR document which is in evidence,

stamped "SECRET," entitled "IMPLICATIONS AND ACTIVITIES ARISING FROM CORRELATION OF SMOKE pH WITH NICOTINE IMPACT, OTHER SMOKE QUALITIES, AND CIGARETTE SALES." I'd like to direct --

It's, by the way, is written by a Claude E. Teague, Jr. Do you know Mr. Teague?

A. I've never met him.
Q. Have you read some of his documents?
A. I've heard his name, and I believe I may have seen a document or two of his that you've selected for this deposition -- or for this litigation.
Q. Have you ever --
A. And perhaps in my -- and perhaps in my deposition.
Q. Did you ever see any of his documents before this litigation?
A. I don't believe so, no, sir.
Q. Did you ever see this document before this litigation?
A. I don't believe so, no, sir.
Q. Can you turn to the page which has number two at the top, "SMOKE pH AND FREE NICOTINE."
A. All right.
Q. "In essence, a cigarette is a system for delivery of nicotine to the smoker in attractive,

useful form." Do you see that?

A. Yes, I see that.
Q. Did you have discussion about that with RJR in 1994, around the time of the congressional hearings?
A. No, sir.
Q. Did you have any discussion with RJR regarding free nicotine and its manipulation?
A. No, sir. As I mentioned before, I'd not seen this document before just a few days ago, perhaps a few weeks ago.
Q. I'm just asking you now about the subject matter. Did you ever have discussions --
A. The answer --
Q. -- with anyone at RJR about the manipulation of free nicotine?
A. No, sir.
Q. Did you have any discussion with anyone at The Tobacco Institute regarding that subject matter in 1994?
A. No, sir.
Q. Have you ever had any discussion with anyone at The Tobacco Institute regarding that subject matter?
A. Regarding free nicotine, no, sir.
Q. Do you know if Mr. Whitley saw this document in 1994 before he testified before the congressional

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committee?
A. I don't know what documents Mr. Whitley may have looked at, no, sir.
Q. You didn't see it before you gave any statements; correct?
A. That is correct.
Q. Can you direct your attention to Exhibit 12408. This is a document entitled "RJR CONFIDENTIAL, RESEARCH PLANNING MEMORANDUM ON THE NATURE OF THE TOBACCO BUSINESS ON THE CRUCIAL ROLE OF NICOTINE THEREIN."
Can you direct your attention to the first page, sir.
A. All right.
Q. This again is a memorandum prepared by Mr. Teague on April 14th, 1972.
By the way, do you know who Dr. Senkus is at RJR?
A. I believe I have met him once or twice.
Q. Did you ever talk to him about the manipulation of free nicotine?
A. No, sir.
Q. Did you ever talk to him about the subject matter of the cigarette as a drug-delivery device?
A. No, sir, I don't believe I did.

Q. You --
A. I haven't -- I haven't seen or talked to him in a long, long time.
Q. He was the head of research and development at RJR?
A. I don't know what his position was when I met him briefly.
Q. Well, do you know if he was ever the head of research and development at RJR?
A. I do not.
Q. Did you ever ask him what his position was?
A. I only knew he was in research.
Q. On this page it states, "In a sense, the tobacco industry may be thought of as being a specialized, highly ritualized and stylized segment of the pharmaceutical industry. Tobacco products, uniquely, contain and deliver nicotine, a potent drug with a variety of physiological effects."
Did Mr. Whitley testify to that at the congressional hearings?
A. I don't recall that Mr. Whitley used those words, no, sir.
Q. Did he say anything near those type of words, that it was a potent drug?
A. Not to the best of my recollection, no, sir.

Q. Did Mr. Whitley ever say that any of the defendants were part of a highly ritualized and stylized segment of the pharmaceutical industry?
A. No, sir.

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Q. Did they ever tell you that was their internal belief?
A. No, no one ever told me that was an internal belief of any company, no, sir.
Q. When's the first time you saw this document?
A. Either at my deposition, or perhaps in preparation for this litigation, it was one of the ones that you'd picked out.
Q. Did you ask to see other documents from the defendants' lawyers when you were shown this one?
A. I was shown this one because it was one you had selected, I understood.
Q. Did you ask to see any others?
A. I had a lot of documents that you'd asked me to look at. I had time to look at those and no more.
Q. Okay. Other than the ones that your lawyers told us -- told you we were going to use, did you ask to look at any other documents?
A. No, sir. Just wasn't time.
Q. Your only job is with The Tobacco Institute; isn't it?

A. Yes, sir.
Q. Can you go down a little bit in that paragraph where it says -- toward the -- toward the bottom it starts, "Thus a product...." Do you see that?
A. Where it begins "Thus a tobacco product is...?"
Q. Correct.
A. All right.
Q. "Thus a tobacco product is, in essence, a vehicle for delivery of nicotine, designed to deliver the nicotine in a generally acceptable and attractive form."
Mr. Whitley did not tell Congress that; did he?
A. No, sir.
Q. You did not say that publicly on behalf of the tobacco industry; did you?
A. No, sir, I have not.
Q. None of the defendants said that on behalf of the tobacco industry at that time; did they?
A. Not that I'm aware of, no, sir.
Q. None of the defendants ever said that before that date; did they?
A. If they did, I'm not aware of it, no, sir.
Q. It goes on to state, "Our industry is then based upon design, manufacture and sale of attractive dosage forms of nicotine, and our company's position

in our industry is determined by our ability to produce dosage forms of nicotine which have more overall value, tangible or intangible, to the consumer than those of our competitors."
Did any of the member companies, the defendants in this case, tell you at any time that the industry was based upon the design, manufacture and sale of attractive dosage forms of nicotine?
A. No, sir.

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Q. Did you ever state that publicly at any point in time anywhere in this country, sir?
A. No, sir.
Q. Did you ever state it anywhere in the world?
A. No, sir.
Q. Do you know if the industry ever stated that anywhere in this country?
A. Not to the best of my knowledge.
Q. Can you direct your attention to page four of this document, and I'd like to direct your attention specifically to the bottom paragraph. And please take the time to read it.
You see there that Mr. Teague is referring to two types of customers, the pre-smoker or non-smoker, and an individual who is already a confirmed smoker?
A. Yes, sir.

Q. Now do you see that Dr. Teague's referring to the fact that nicotine is unknown and largely unexplained to the non-smoker?
A. That's what he says.
Q. Did any of the defendants ever tell you that non-smokers largely do not know about nicotine?
A. No, sir, I don't recall anyone ever telling me that.
Q. Did you ever have any discussion with anyone at RJR or any of the defendant companies regarding that subject matter?
A. No, sir.
Q. Did you have discussion with RJR or any of the defendant companies with respect to the fact that most starters are youth?
A. Most people who start smoking are youth did you say?
Q. Correct.
A. I am sure that that's been discussed. I know it's been discussed in connection with the initiatives that the industry has undertaken to attempt to discourage young people from smoking.
Q. We'll get to those, sir.
Have you had that discussion with the industry?
A. In general terms, yes, sir.

Q. And you're aware, are you not --
A. With people at the companies, yes, sir.
Q. Pardon me?
A. I've had that discussion with people at the companies, yes, sir.
Q. Then you are aware, are you not, that over 80 percent of smokers start before the age of 18?
A. I believe the number is less than 80 percent, but it's substantial in any case, yes, sir.
Q. And you're aware that the defendants targeted those individuals; correct?
A. No, I'm not aware of that, sir.
Q. You've seen documents in this case which reflect the fact that they targeted those individuals.

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A. I've not seen documents which demonstrate to me that the companies or any company has targeted kids as smokers -- as customers. I've seen documents which -- which list observations about the number of kids who smoke.
Q. I'm going to hand up a document to you that's in another book.
A. Okay.
Q. I believe you have them up there, sir. They're on your right.
A. All right.

Q. Can you go to the recross book, volume one, Exhibit 12493.
Do you have it, sir?
A. I do.
Q. Okay. This is an RJR 19970 -- 1975 marketing plan presentation to the board of directors at Hilton Head, September 30th, 1974?
A. Yes, sir.
Q. You've reviewed this document?
A. Can you give me a moment? I'm not certain I have.
I don't believe I have.
MR. CIRESI: Your Honor, we'd offer Exhibit 12493.
MR. BLEAKLEY: Excuse me just a moment, Your Honor.
No objection.
THE COURT: The court will receive 12493.
BY MR. CIRESI:
Q. Can you direct your attention, first of all, to the first page. It says "PRESENTATION TO THE RJRI BOARD OF DIRECTORS, 9/30/74, MARKETING PLANS," do you see that?
A. Yes, sir, I do.
Q. Can you turn to the next page then.

A. Uh-huh. All right.
Q. 1975 MARKETING PLANS PRESENTATION, HILTON HEAD, SEPTEMBER 30, 1974." And they stated first of all their objective in 1975; correct?
A. That's correct.
Q. And the objective is "Our paramount marketing objective in 1975 and ensuing years is to re-establish RJR's share of marketing growth in the domestic cigarette industry." Do you see that?
A. Yes, sir.
Q. "Paramount." That's the same word we saw in the Frank Statement; is it not, sir?
A. That's a word that's common to both documents, yes, sir.
Q. And in the Frank Statement the defendants in this case said, "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business." Correct?
MR. CORRIGAN: Your Honor, objection. The

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phraseology "defendants" in this case is not correct with respect to that document. I ask that the question be rephrased.

THE COURT: I'm sorry, I don't understand the objection.

MR. CORRIGAN: Your Honor, Mr. Ciresi in

describing the document just now said the defendants in this case made the statements in the Frank Statement. He knows that's not true.

THE COURT: Rephrase the question, counsel.

BY MR. CIRESI:

Q. Well, the defendants who are listed down below here made that statement; correct, sir, that are listed on this document?

A. Yes, sir.

Q. And Brown & Williamson is one of those companies; correct?

A. Yes, sir.

Q. And they're part of the family of B.A.T; correct?

A. I believe so, yes.

Q. And you have an understanding that B.A.T provides research and development to B&W?

MR. CORRIGAN: Objection, Your Honor. I ask for Mr. Ciresi to be specific when he says B.A.T. Is he talking about BATCo or B.A.T Industries?

THE COURT: Would you like to be specific, counsel?

MR. CIRESI: We'll take both.

Q. Are you aware that BATCo provides research and development?

A. I really don't know what the connections or synergies are between B.A.T or BATCo and Brown & Williamson.

Q. Have you looked at their documents in this case?

A. I have looked at some documents, yes, sir.

Q. You know they share research and development; don't you?

A. I don't know that, no, sir.

Q. Well you know it from the documents; don't you?

MR. BLEAKLEY: Objection, asked and answered, Your Honor.

THE COURT: It's been asked and answered.

Q. Now directing your attention back to Exhibit 12493, the chart two talks about four key opportunity areas to re-establish RJR's share of the marketing growth; correct?

A. Yes, it does.

Q. Number one is stated "Increase our young adult franchise." Do you see that?

A. Yes, I do.

Q. And when they define young adult, they define that as the age group from 14 years old to 24 years old; don't they?

A. Well apparently, although he says -- he says in

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reference to 1960, so apparently that's what he means

in 1960. I don't know if that's what he means in 1974.
Q. This is a 1974 document; correct, sir?
A. Yes, it is. But he's speaking of --
Q. Excuse me.
A. -- something from 1960.
Q. It is a presentation to the board of directors; correct?
A. Yes, it is.
Q. And then he says, "Let's look at the growing importance of the young adult in the cigarette market." Correct?
A. Correct. Correct.
Q. And he says, "In 1960, this young adult market, comma, the 14-to-24 age group, comma, represented 21 percent of the population." Correct?
A. Correct.
Q. Then he goes on to say, "As seen by this chart, they will represent 27 percent of the population in 1975." Correct?
A. That's correct.
Q. He says, "They represent tomorrow's cigarette business." Correct?
A. That's what he says.
Q. "As this 14-to-24 age group matures, they will

account for a key share of the total cigarette volume - for at least the next 25 years." Correct?
A. Yes.
Q. So those people today would be somewhere between, what, 39 and 49 years old?
A. Approximately, yes, sir.
Q. If you go on to the next page, next to chart four, you see a comparison of Philip Morris and Brown & Williamson with regard to this young adult group, the age 14 to 24; correct?
A. That is correct.
Q. And with respect to that young adult group age 14 to 24, it is reported that Philip Morris had a 38 percent share and Brown & Williamson a 21 percent share; correct?
A. Correct.
Q. And if we go down to chart six, they start comparing by age Winston and Salem, which are RJR's products, versus Marlboro and Kool; correct?
A. That is correct.
Q. And it is reported there to the board of directors that Winston is at 14 percent in the 14-to-24 age group versus Marlboro at 33 percent, and Salem is at nine percent versus Kool at 17 percent; correct?

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A. That is right.
Q. Now Kool is a Brown & Williamson cigarette; correct?
A. Correct.
Q. Salem is an RJR; correct?
A. Yes.
Q. If you go to the next page you'll see that the strategy that was going to be implemented by RJR is explained to the highest level of the corporation, its board of directors; correct?
A. This was a recommendation he made, yes, sir. Whether it was carried out, I have no -- I have no way of knowing.
Q. Sir, this is a statement made to the board of directors at Hilton Head Island on September 30, 1974; correct?
A. Yes, uh-huh.
Q. Did you see any documents that said they didn't carry this out?
A. I saw none that said they did or did not, no, sir.
Q. My question was did you see any that said they did not?
A. I saw no documents that said they carried this out, no, sir.

Q. Did you see any document which said we can't do this, we will not sell to children of 14 years of age? Did you see any such document?
A. I certainly have seen documents consistently from the companies in the years I have been at The Tobacco Institute which said very clearly they don't want kids as customers.
Q. Did you see any document which said we will not sell to 14-year-olds in carrying out this strategy? "Yes" or "no."
A. I did not see any document that said we will not carry out this strategy, nor did I see any document which said we will carry out this strategy.
MR. CIRESI: Move to strike everything after "or" as not responsive.
THE COURT: I'll let the answer stand.
Q. Can you direct your attention now to the strategy. "Direct advertising appeal to the younger smokers." Do you see that?
A. Yes, sir, I see it.
Q. And down below under chart eight, "Research has shown that among young adults, the new Winston ads generate twice as much recall as any previous Winston campaign and are 40 percent more persuasive compared to the Marlboro campaign." Correct?

A. Yes, sir, I see that.
Q. Now you said you didn't see anything in their documents that said they did or didn't carry out a marketing strategy; didn't you, sir?
A. That's correct.

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Q. You just said that; didn't you?
A. Yes, sir.
Q. And right here it says they are reporting to the board of directors that research has shown that among these young adults age 14 to 24, the new Winston ads generate twice as much recall as any previous Winston campaign and are 40 percent more persuasive compared to the Marlboro campaign; correct?
A. That is an observation of the data that they've made, yes, sir.
Q. And if you direct your attention, sir, to the page which bears the Bates number 1316, which talks about the media campaign of RJR with regard to this strategy, "We have also increased our media efforts toward young adults for our brands." Do you see that?
A. I see it, yes, sir.
Q. That is speaking to the fact that RJR has already taken action with regard to young adults; correct?

MR. BLEAKLEY: Your Honor, I object. That's argumentative. The document speaks for itself. And Mr. Merryman was not involved in these campaigns.
THE COURT: You may answer it if you know.
A. I don't know.
Q. Wouldn't you agree it's reasonable to conclude that from the statement?
MR. BLEAKLEY: Objection.
Q. "We have also increased our media efforts toward young adults for our brands."
MR. BLEAKLEY: Objection, Your Honor. Now he's asking the witness to speculate.
THE COURT: The objection is sustained.
Q. Does it report in there what specific undertakings RJR has done with regard to media efforts toward young adults?
A. It does.
Q. "Increased advertising insertions in young adult magazines like Sports Illustrated, Playboy and Ms.;" correct?
A. That's what it says.
Q. "New young adult special interest magazines;" correct?
A. Yes, sir.

Q. "Expanded outdoor with selective locations for maximum young adult exposure." Correct?
A. That's correct.
Q. It also talks about special events and promotional activities in this document, doesn't it?
You go on two more pages.
A. Yes, that's correct.
Q. Talks about heavy involvement at event site, permanent billboard advertising, and brand exclusivity at concession stands; correct?

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A. Where are you in the document, sir?
Q. Two pages forward, next to chart 17.
A. Yes, that's correct.
Q. RJR says we're going to sell our branded event-related items such as Winston hats, shirts and jackets; correct?
A. That is what it says, yes, sir.
Q. And they're going to have tie-in banners and posters with strong brand identification and brand commercials over the public address systems; correct?
A. That is correct.
Q. Can you direct your attention to Exhibit 13101.
A. Yes, I have it. I'm sorry, sir.
Q. This is an RJR document to Mr. Horrigan from G. H. Long; correct?

A. Correct.
Q. You know Mr. Horrigan?
A. Yes, I do.
Q. He was president of RJR?
A. He was.
Q. Also president of -- was it Brown & Williamson?
A. No, I don't believe Mr. Horrigan was ever president of Brown & Williamson.
Q. Only RJR; correct?
A. He was president of R. J. Reynolds, yes, sir.
Q. And in 1980 you were at The Tobacco Institute; correct?
A. I was, yes, sir.
Q. And you were on TV saying that RJR and the other defendants didn't target youth; correct?
A. That is correct, that our -- that's our industry policy.
Q. The policy. That's the written policy; right?
A. Yes, sir.
Q. Just like the policy that cigarette doesn't cause any illnesses; correct?
A. That's not our policy. Don't misstate it, sir. We don't know if it does.
Q. Oh, okay. Your policy is that you don't know if it causes illness or not; is that right?

A. That's one of the things we believe, yes, sir.
Q. Okay. Another policy is that smoking isn't addictive; correct?
A. I don't believe it is, no, sir.
Q. That's another policy; isn't it?
A. That is correct, yes, sir.
Q. Now while you were on TV on behalf of the industry speaking about these policies, the companies were marketing to youth; weren't they?
A. I don't know that to be a fact, no, sir.
Q. Can you direct your attention, then, to this 13101.
MR. CIRESI: And we'd offer it, Your Honor.
THE COURT: Is there any objection?
MR. BLEAKLEY: I'm sorry. Was that

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introduced?
THE COURT: 13101.
MR. BLEAKLEY: Sorry, Your Honor. No objection.
THE COURT: Okay. 13101 will be received.
BY MR. CIRESI:
Q. Now this is a report from a Mr. Long to the president of the company, E. A. Horrigan, Jr.; correct?
A. Correct.

Q. And it's attaching a report concerning teen-age smokers age 14 to 17; correct?
A. That is correct.
Q. And it's July 22nd, 1980; correct?
A. It is.
Q. And at that very same time, just so the record's clear, you were saying that the industry wasn't marketing to youth; weren't you?
A. That's correct.
This -- this document appears to offer some observations on youth smoking, and that's all I see here.
Q. Now this report to the president of the company reads as follows. "Last January, a report was issued on this subject that indicated that Philip Morris had a total share of 59 among 14- to 17-year-old smokers, and specifically, Marlboro had a 52 share."
Now does that mean percent?
A. I suppose it would be percent.
Q. Okay. And you know that "means" share of the market for that age group; isn't that right?
A. Typically that's what it means, yes, sir.
Q. That's what you've come to understand it to mean during the course of your dealings on behalf of the tobacco industry; correct?

A. That is correct, yes, sir.
Q. And here in 1980 Mr. Long was telling Mr. Horrigan about the youth market and what share the various companies had; correct?
A. That is correct, yes, sir.
Q. And it is reported to Mr. Horrigan, the president, that the latest report indicates that Philip Morris's corporate share has increased by about four points but Marlboro remains the same; correct?
A. That is correct.
Q. It is also reported to Mr. Horrigan, the president of RJR, that RJR's share is decreasing in that market; correct?
A. Correct.
Q. And Mr. Long reports to Mr. Horrigan what RJR is going to do in the fall to remedy that situation; correct?
The last line, sir.
A. Mr. -- Mr. Long does make that statement, yes,

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sir.
Q. He says "Hopefully" -- and "hopefully" refers to the fact that they're going to hopefully increase their share in that market; right?
A. I don't know what he means, but he does say

"hopefully."
Q. Okay. But that's fair to conclude that's what he means; isn't it, Mr. Merryman?
A. I think that's one conclusion you could reach.
Q. "Hopefully, our various planned activities that will be implemented this fall will aid in some way in reducing or correcting these trends." Correct?
A. Correct.
Q. And you don't think that means that RJR was marketing to youth in 1980; correct?
A. I don't know what they ended up doing.
Q. Well let me ask it this way: Do you think this manifests an intent to market to youth in 1980?
MR. BLEAKLEY: Objection, Your Honor, calls for speculation.
THE COURT: Sustained.
MR. CIRESI: Your Honor, this is an individual who reports on behalf of this indistry and speaks to this issue.
THE COURT: The objection is sustained.
BY MR. CIRESI:
Q. Sir, did you ever ask anyone at any of these companies whether they were marketing to youth despite their policy?
A. Every communication I ever received from any of

the companies was that they weren't marketing or advertising their product to youngsters.
Q. Okay.
A. That was very consistent and has been consistent over the 22 years I have been at the Institute, sir.
Q. That's not what I asked you. I know what you want to say, and your counsel will have a chance to ask you -- ask you questions. See if you can answer mine.
Did you ever specifically ask anyone at any of these defendants whether they were marketing to youth while you were out voicing a policy that they weren't marketing to youth? Did you ever ask them that?
A. I never asked them directly because they always made it clear what their policy was, what their position was.
Q. Not -- not once in 21 years have you ever asked the question; have you, Mr. Merryman?
A. No. It didn't seem necessary.
Q. Because they sent you materials saying they weren't; is that right?
A. Because every single communication was consistent on that subject. I believe it.
Q. Do you know if Brown & Williamson targeted 16-year-olds?

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A. I believe there are some documents that I may have looked at in this litigation regarding that subject, but I can't recall for certain, sir.
Q. Do you know if they built their Newport business on the backs of high-school smokers based on documents you reviewed?
A. Brown & Williamson doesn't -- doesn't make Newports, sir.
Q. Excuse me. Kools. I misspoke.
A. I don't know if that statement is -- appears someplace.
Q. Did you see such a statement?
A. I may have. I don't recall, sir.
Q. Did you see statements that Philip Morris was marketing to youth?
A. Do you have a document that you'd like to talk about? I don't recall specifically seeing that.
Q. Do you recall --
A. If there's something you'd like to ask me about and show me, I'll be happy to try to respond.
Q. I will do that. I'm just asking you now if you recall in looking at these documents that Philip Morris marketed to youth.
A. I -- I may have. I just don't recall.
Q. Can you direct your attention to Exhibit 10299.

Do you know who Dr. Wakeham is?
A. I'm never met him, but I recall that he was in the research and development -- research and development at Philip Morris.
Q. Did you ever talk to him on the phone?
A. No, I don't believe I ever did.
Q. This is a presentation to the Philip Morris board of directors, November 26, 1969; correct?
A. That's what it says, yes, sir.
Q. Have you reviewed this document before?
A. I have seen this document, yes, sir.
Q. When did you first see it, sir?
A. In preparation for this litigation.
Q. Okay. Can you turn to the page which bears the last three Bates numbers 749.
A. All right.
Q. Now you understood this was a presentation to the board of directors at Philip Morris regarding smoker psychology research; correct?
A. That's what the cover page says, yes, sir.
Q. And did you read through to satisfy yourself that that's what this document was about?
A. I don't recall doing that specifically.
Q. Did you look at the document at all?
A. I looked at it.

Q. Okay. And did you find here that Dr. Wakeham

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was reporting to the board of directors with regard to smoker psychology for the age group 16 years old to 20 years old?
A. He mentions the 16- to 20-year-old age group.
Q. And he was reporting on their smoker psychology for that age group; correct, sir?
A. There is a portion that deals with that. I don't know that the entire report deals with that, but there is that portion, yes, sir.
Q. And in that portion of the report Dr. Wakeham reports to the board that for that age group, when they're asked about why they smoke, they either parrot an advertising slogan or they give one of the responses "It relaxes me or stimulates me;" is that right?
A. Well he reports that that's one of the -- one of the things that he's summarizing here, asking the smoker why the smoker smokes. Certainly he doesn't appear to say that that's the only reason why people smoke.
Q. I didn't ask you that. Did you understand --
If you don't hear my question or understand it, you let me know. Okay, Mr. Merryman?
A. Certainly.

Q. Okay. I didn't say that was the only reason. I asked you whether or not Dr. Wakeham reported to the board of directors that smokers will either parrot an advertising slogan or give one of two responses, "It relaxes me or stimulates me." Is that what he reported to the board?
A. That's one of the things he reported, yes, sir.
Q. And advertising slogans are the advertising slogans of these companies; correct?
A. Correct. I assume that's what he's talking about.
Q. And here he's talking about an age group from 16 to 20 years old; correct?
A. I believe so.
Q. Can you direct your attention to Exhibit 10497.
A. Yes, I have that.
Q. Have you seen this document before, sir?
A. I don't know if I've seen this one, sir.
Q. It's entitled "A Study Of Smoking Habits Among Young Smokers" prepared for Philip Morris Incorporated, July 1974. Correct?
A. That is right.
MR. CIRESI: We'd offer Exhibit 10497, Your Honor.
MR. BLEAKLEY: No objection.

THE COURT: Court will receive 10497.
BY MR. CIRESI:
Q. Title page is now on the overhead, and if you could direct your attention to the next page, there's a foreward and it talks about the purpose of the study; correct?

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A. Yes, it does.
Q. And it says the questions that the study was designed to explore were six; correct?
A. That is correct, yes, sir.
Q. And those questions are as follows: Number one, "What is happening in the young market with respect to Marlboro nonmenthol and menthols;" correct?
A. Yes, sir.
Q. Number two, "In which segments of the age spectrum are Marlboro nonmenthol and menthols most popular?" Correct?
A. Correct.
Q. Three, "Are younger people starting with menthols or is there mass switching at some point?" Correct?
A. Correct.
Q. Now I believe your previous testimony was that somewhere around two-thirds, you said, of young people start before age 18?

A. I couldn't recall the precise number. I believe you said 80 percent and I said I thought that sounded high. But I still don't recall the exact number. It's substantial and too high, whatever it is.
Q. Okay. So when you're talking about young people starting, those are starters; correct?
A. Young people starting to smoke I suppose could be called starters, yes, sir.
Q. Do you know how many adults start smoking after the age of 21?
A. I don't know the precise number, no, sir.
Q. It's less than one percent. Does that ring a bell?
A. I don't know if that's accurate.
Q. Have you heard that number?
A. I don't believe so. Less than one percent? I don't think that sounds familiar to me.
Q. What have you heard?
A. I don't remember what I've heard on that subject.
Q. No recollection at all.
A. No, sir.
Q. Number four of the questions looked at in this exhibit, "Are smoking patterns different among young blacks, and how much more popular are menthols among

young blacks?"
Five, "Do more whites smoke menthols when some of their friends are black than when few or none of their friends of black?"
Six, "Is there a recognition among young people that menthols are growing in popularity?"
Now, did you review this document -- I -- I'm sorry. I think you said you didn't see this document; is that right?
A. I believe I was aware of it. I don't think I really focused on it. I don't think I saw it more

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than briefly.
Q. Did you become aware of it because you learned of it in this litigation?
A. That is correct, sir.
Q. So you had never seen it before the litigation; correct?
A. I don't believe I did, no, sir.
Q. Were you aware of the fact before the litigation that Marlboro was researching why young people start smoking and differentiating between blacks and whites or any other demographic group?
A. No. A company wouldn't share with us their research information, sir.
Q. Would they share with you the fact that they

were researching youth and when they start smoking?
A. As I said, I wasn't aware of this document before the -- before this litigation.
Q. So the only thing they shared with you was their policy that they would not market to youth; is that right?
A. They shared with us a great deal more than that in order to put a number of projects and programs in place to discourage youngsters from smoking and to encourage legislation to forbid the sale of cigarettes to youngsters.
Q. Do you know how much money this industry spends collectively marketing as opposed to what they spend on youth prevention?
A. I know what the numbers are for marketing expenditures and I know what the figures have been for discouraging young people from smoking, yes, sir.
Q. And from 1983 to 1994, would you agree that the amount spent on youth prevention is one one-hundredth of one percent of the amount spent on marketing and promotion?
A. I've not done the math. I don't know what that percentage is.
Q. If you assume that to be true, you would agree, would you not, Mr. Merryman, that there is a

tremendous disparity between what's spent on marketing and promotion as contrasted with youth prevention, one one-hundredth of one percent?
A. If one assumes that's true, the difference is great. However, that marketing expenditure is not marketing at youth, it's marketing for adult smokers.
Q. Oh. Because that's the policy; right?
A. That's been the consistent policy of the industry, and the industry has put resources behind that policy for many, many years.
Q. Yeah. One one-hundredth of one percent over 11 years.
A. I think a 35-million-dollar commitment in that area is substantial. Some may argue with it, but I think it certainly reveals a very substantial commitment to that policy.

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Q. Compared to, what is it, 40 billion dollars over the same period -- excuse me, 27 billion dollars over the same period for marketing and promotion?
A. Well as I said, I -- I haven't done the math. I don't know what the -- what the total is.
Q. But you did --
A. But I think that the commitment the industry has made to discouraging youth smoking is substantial, and I think it demonstrates that the industry is very

serious about that policy.
Q. You did the math for how much they spent to prevent youth smoking; is that right?
A. That's in a document, yes, sir.
Q. Now --
And the math on marketing and promotion you apparently didn't do; correct?
A. No, sir, I didn't -- I didn't see the comparison.
Q. You wouldn't argue with the 27-billion-dollar figure for that period of time; would you?
A. I don't know what it is.
Q. Now directing your attention, sir, back to 10497, this survey conducted on behalf of Philip Morris required the interviewers to go to locations where young adults might be gathered in order to do the survey; correct?
Direct your attention to page two. It's part of the foreward.
A. Yes, sir, that's what it says.
Q. Okay. They were instructed to go to locations where young people, as described in their quota assignments, were likely to be found; correct?
A. That is correct.
Q. Near high schools and colleges; correct?

A. Correct.
Q. Around young people's hangouts, such as soda fountains, recreation areas, parks, bowling alleys, beaches, lakes, et cetera; correct?
A. That is correct.
Q. Now this would be contrary to the policy that you learned about through documents sent to you by the industry; correct?
A. Well if it resulted in a plan of marketing toward youth, it certainly would be. And I wouldn't agree with it.
Q. So the answer is yes, it would be against the policy; correct, sir?
A. If it resulted, as I said, in a marketing plan to target youth, it's something I wouldn't agree with and it would be contrary to -- to our policy.
Q. To the stated policy; correct?
A. Yes, sir.
Q. The one that's said externally; correct?
A. The one that's said what, sir?
Q. Externally, external to the companies, to the

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public.
A. It's -- it's the policy that we enunciated on behalf of the companies, yes, sir.
Q. And can you direct your attention to page four.

THE COURT: Counsel, counsel, I think we'll take a short break at this time.
THE CLERK: Court stands in recess.
(Recess taken.)
THE CLERK: All rise. Court is again in session.
(Jury enters the courtroom.)
THE CLERK: Please be seated.
BY MR. CIRESI:
Q. Mr. Merryman, we were on Exhibit 4 -- or 10497. 10497.
A. Yes, sir.
Q. That's the Philip Morris study.
A. Yes, sir.
Q. Now if you go to page three, you'll see the title of that is the "SUMMARY OF MAJOR FINDINGS?"
A. It is, yes, sir.
Q. And if you turn to the next page, at the very bottom, do you see it's reported that this study by Philip Morris found that Marlboro was the starting brand for young whites and Kool the starting brand for young blacks? Do you see that?
A. That's what it says, yes, sir.
Q. And again, starters are predominantly youth; correct?

A. Doesn't say that.
Q. I didn't --
A. But from what we've discussed before, that's a reasonable assumption, I guess.
Q. Can you turn to page six, and at the bottom is there a reference with respect to what Philip Morris could do about what was found in this survey?
A. Yes, sir, there is.
Q. I'd like to read this portion, then ask you some questions.
"What can Philip Morris do about the situation? We are not sure that anything can be done to halt a major exodus if one gets going among the young. This group follows the crowd, and we don't pretend to know what gets them going for one thing or another. Certainly Philip Morris should continue efforts for Marlboro in the youth market, but perhaps as strongly as possible aimed at the white market rather than attempting to encompass blacks as well."
Now sir, did any of the companies, including Philip Morris, ever tell you that they were actually marketing in the youth market in the 1970s or '80s?
A. No, sir.
Q. Did they ever share these types of documents with you?

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A. No. This would not have been shared with us, no, sir.
Q. So that if they were actually doing that, you didn't know about it; did you?
A. We didn't know anything about internal marketing plans. This is a recommendation. What came of it I have no way of knowing.
Q. If they were in fact marketing to youth, they didn't tell you about it; correct?
A. They would not have shared with us marketing plans for any segment, no, sir.
Q. So that you were not aware of their marketing to youth, if in fact they were doing that; correct?
A. We would not have been, as a trade association, aware of commercial planning by our member companies.
Q. They would have withheld that information from you; correct?
A. As a trade association I don't believe it would have been proper for us to receive information on their commercial plans, their marketing plans, no, sir.
Q. They would have withheld the information from you; correct?
A. Absolutely. I think it's very proper for them to do so.

Q. You would have been deceived with regard to what they were actually doing if in fact they were marketing to youth; correct?
A. We would not have received any information on -- on marketing at all.
Q. You would have been deceived.
A. Well since we don't receive information on marketing from our member companies, I don't think -- I don't think the use of the word "deceived" there is proper.
Q. Well if they were actually marketing to youth, you didn't know it; isn't that right?
A. We did not know anything about specific marketing plans that our member companies had because it simply isn't appropriate for a trade association to know that kind of thing.
Q. You were speaking on behalf of the entire industry saying that the industry was not marketing to youth; correct?
A. That was the --
Yes, that was the information that we received from our companies.
Q. And --
A. Our member companies.
A. -- if they were actually marketing to youth,

then you were deceived by them with regard to what they were doing; correct, sir?

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A. If they were doing what you suggest, then we wouldn't have been given accurate information by the companies.
Q. You would have been deceived; correct?
A. But I don't believe that there is any showing that that in fact happened.
Q. Sir, if you weren't given accurate information, you would have been deceived; correct?
A. Correct.
Q. And you, on behalf of the entire industry, would have been deceiving the American public because you were saying they weren't marketing to children; correct?
A. That was our information, that they weren't. That was the industry's policy, that was the industry's perspective on the issue, and we made certain that that policy was well known.
Q. You would have been deceiving the American public because you weren't provided the information; correct?
A. We weren't providing information on -- on marketing plans that our companies have, but I don't know that they ever had marketing plans, as you

suggest, to try to convince kids to begin smoking.
Q. You --
A. Just the opposite.
Q. You would have been deceiving the American public because they would not have provided the information; correct, sir?
MR. BLEAKLEY: Your Honor, I object at this point. I think it's getting very argumentative.
THE COURT: It's -- I think you've got the answer you're going to get, counsel. Maybe you should move on.
Q. You can't answer that question?
MR. BLEAKLEY: Objection.
THE COURT: Counsel, move on, please.
Q. Can you turn to Exhibit 11808.
A. I have that.
Q. Did Philip Morris ever tell you they dominated in the 17 and younger age category?
A. Philip Morris did not, no, sir.
Q. Did they ever tell you that they capture over 50 percent of that market?
A. I don't recall that, no, sir.
Q. Directing your attention to Exhibit 11808, have you ever seen this document before, a March 29th, 1979 memorandum of Philip Morris?

A. I don't believe I have, no, sir.
MR. CIRESI: We'd offer Exhibit 11808, Your Honor.
MR. BLEAKLEY: No objection.
THE COURT: Court will receive Exhibit 11808.
BY MR. CIRESI:

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Q. Sir, this is a Philip Morris document dated March 29th, 1979, regarding the subject matter of Marlboro. I'd like to direct your attention to that portion which says "Demographics."
A. All right.
Q. "Marlboro dominates in the 17 and younger age category, capturing over 50 percent of this market."
When a company captures a market, does that mean that company is marketing to that market?
A. It doesn't mean that to me.
Q. No relationship at all to you; correct?
A. It doesn't mean that the company is marketing to that segment.
Q. Can you direct your attention to Exhibit 11780.
Before you go there, sir, let me ask you to go back to 11808 for one minute. I'm sorry.
A. All right.
Q. Do you see reflected there the fact that

Marlboro represents 60 percent of Philip Morris U.S.A. sales?
A. Yes, sir, I see that.
Q. And that the brand accounts for one-third of all the growth of Philip Morris U.S.A.?
A. I see that.
Q. Based on this document, would it be fair to assume that that growth for Philip Morris came from youth?
A. I can't make that assumption, no, sir.
Q. Even though Marlboro was dominating in the 17 and younger category; correct?
A. That's what it says.
Q. Even though the vast majority of smokers who start are youth; correct?
A. That is correct.
Q. If you to turn to Exhibit 11780.
A. All right.
Q. 11780, --
A. Yes.
Q. -- you have it?
A. Uh-huh.
Q. This is a Philip Morris product testing short course. Have you seen this document before?
A. No, sir, I've not.

Q. Did you review this when it was provided to you by the lawyers?
A. This document is not familiar to me, no, sir.
MR. CIRESI: We'd offer Exhibit 11780, Your Honor.
MR. BLEAKLEY: I can't tell what this document is.
MR. CIRESI: It's a product testing document by Philip Morris dated January 23rd-24th, 1984.
MR. BLEAKLEY: All right. No objection.
THE COURT: The court will receive 11780.

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BY MR. CIRESI:
Q. If we could go to the second page, we'll see what the full title is and who it was prepared by. This is Exhibit 11780, "PRODUCT TESTING, SHORT COURSE," Mr. Ennis, Mr. Tindall, Mr. Eby, Product Evaluation Division, R&D department, Philip Morris, Richmond, Virginia, January 23rd-24th, 1984.
Can you go to the preface page there.
A. All right.
Q. And is the purpose of the short course set forth therein?
A. It appears to be.
Q. Let me read it. "In preparing for this short

course in Product Testing, there were two considerations. First, we intended to make sure that basic principles and traditional forms of product testing and analysis were covered. Second, we felt that it was important to communicate our latest thinking on how product testing should be conducted which involves some new, less tried concepts. Research in the Product Evaluation Division, Research and Development Department in Richfield -- Richmond proceeds continually and so our knowledge of this subject continues to expand, creating new outlooks and new methodology. In this course we hope to provide both the backbone of our testing system and the general direction in which our thinking is headed for the future."
Now sir, can you direct your attention to page 7504, the last four Bates numbers.
A. All right.
Q. And this is part of the "Demographic Developments" section of this short course; correct?
A. That's the heading, yes, sir.
Q. And if you go to the second paragraph, do you see the following statement: "Marlboro floundered for eight years and then hit -- and then hit a responsive chord among post-war baby-boom teenagers

with a theme from the Magnificent Seven and an image uncalculatedly right for the wave of teenagers coming of smoking age."
Now sir, did you ever receive anything from Philip Morris in the 21 years you've been with The Tobacco Institute which set forth that Marlboro rose to prominence on teen-agers?
A. I've not seen this document before this litigation, no, sir.
Q. Did you ever have a discussion with anyone at Marlboro -- or at Philip Morris regarding that subject?
A. I don't recall a discussion specific to a brand with anyone at Philip Morris, no, sir.
Q. And you see the reference in the next section to Kool cigarettes?
A. Yes, sir.

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Q. And you see there that there's a reference that Kool was the "in" menthol brand among young people?
A. I see a reference to Kool and -- and blacks, it says.
Q. Well let me read it. "While it is difficult to see anything in the Kool image that young people could associate with, Kool was apparently the 'in' menthol brand corresponding to Marlboro, especially

among blacks." See that?
A. Yes, sir.
Q. And who manufactures Kool?
A. Brown & Williamson.
Q. Did you have any discussions with Brown & Williamson about whether they market to youth?
A. Yes, sir.
Q. And have they told you that they targeted youth?
A. No, they have not said that they've targeted youth. Just the opposite.
Q. Can you direct your attention, then, to Exhibit 13723.
By the way, who at Brown & Williamson said the opposite?
A. The people with whom I usually have contact with in their public affairs and public relations divisions.
Q. Public affairs. Can you give me a name?
A. Tom Fitzgerald.
Q. Tom Fitzgerald.
Anybody else at Brown & Williamson tell you they did not market to youth?
A. Joe Helewicz.
Q. Is he in the PR department, too?
A. Yes, sir.

Q. Did you talk to any scientists or marketers at Brown & Williamson?
A. I don't have contact with scientists and marketers at any of the companies on a regular basis. It would be very unusual for me to do that.
Q. And Brown & Williamson's public relations policy position was that they don't market to youth; correct?
A. The clearly-stated policy position of Brown & Williamson and every other tobacco company is that they don't market to young people.
Q. If you could direct your attention, then, to Exhibit 13723.
A. Is that in volume two?
Q. It is. I'm sorry.
A. All right.
Q. This is a Brown & Williamson document; correct?
A. It appears to be.
Q. Have you reviewed this document?
A. I don't believe so.
Q. Did Mr. Fitzgerald or Mr. Helewicz ever review this document with you?

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A. No, sir.
MR. CIRESI: Your Honor, we'd offer Exhibit 13723.

MR. BLEAKLEY: Your Honor, we do have an objection to this exhibit. There is no indication of the author. We don't know who the author is. This is not a business record. It's undated. It's a bunch of documents attached together. So we do object on the grounds of lack of foundation.
MR. CIRESI: This is a document produced by Brown & Williamson in this litigation as an ordinary business record. There was no objection made pursuant to court orders in this case.
THE COURT: All right. Court will receive 13723.
BY MR. CIRESI:
Q. The first page of this is entitled "Group I: High-Filtration/Low 'Tar' Products," and Group II, New Segmentation of Cigarette Market." Do you see that, sir?
A. Yes, I do.
Q. And can you direct your attention to page 6815.
A. All right.
Q. And is the -- is a direct target group set forth therein in this Brown & Williamson document?
A. There is.
Q. And does it refer to 16-year-olds to 25-year-olds?

A. 16- to 25-year-old smokers, et cetera, yes, sir.
Q. And did Mr. Fitzgerald or Mr. Helewicz ever tell you that Brown & Williamson targeted 16- and 17-year-olds?
A. No, sir.
Q. Can you direct your attention, then, to Exhibit 13820, which is the next exhibit in your book.
A. All right.
Q. This is another Brown & Williamson document?
A. It appears to be.
Q. And have you reviewed this document?
A. I have not.
Q. Did Mr. Fitzgerald or Mr. Helewicz ever talk to you about this document?
A. I don't believe so, no, sir.
MR. CIRESI: Your Honor, we'd offer Exhibit 13820.
MR. BLEAKLEY: No objection.
THE COURT: Court will receive 13820.
BY MR. CIRESI:
Q. See the first page, it's to Mr. Pittman, who was an executive vice-president, from R. L. Johnson, a brand manager. I'd like to direct your attention down to paragraph three. Is there reported therein that "KOOL has shown little or no growth in the

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26-plus age group," and that growth was coming from the 16-year-old to 25-year-olds?
A. That's what it says.
Q. And is there also reported that at the present rate, a smoker in the 16 to 25 age group will soon be three times as important to Kool as a prospect in any other broad age category?
A. That's what it says, yes, sir.
Q. Did you ever have a discussion with Mr. Helewicz or Mr. Fitzgerald about the fact that the 16- to 17-year-old, up to 25-, was the most important demographic market for Kool?
A. No, sir, that never was mentioned to me.
Q. Did they ever tell you they targeted those individuals?
A. No, sir.
Q. Can you direct your attention to the last page of this memorandum, and specifically -- I'm sorry, not the last page, it's the page that bears the Bates number 998.
A. All right.
Q. Do you have it?
And you see number three there, "KOOL'S stake in the 16- to 25-year-old population segment is such that the value of this audience should be accurately

weighted and reflected in current media programs. As a result, all magazines will be reviewed to see how efficiently they reach this group and other groups as well."
Now do you know what the term "accurately weighted" means?
A. No, I do not.
Q. You don't know what that means in terms of marketing?
A. No, sir.
Q. Did Mr. Fitzgerald or Mr. Helewicz ever talk about the fact that Brown & Williamson was targeting its media programs to reach 16- and 17-year-olds?
A. They never discussed marketing with me in any way.
Q. So if they were doing that, you were deceived with regard to that; correct?
A. We never received information on specific marketing plans by our member companies. It wouldn't have been appropriate.
Q. Well you were deceived, then, if they were actually marketing to those people; correct?
A. Well I -- I think my answer stands. We don't receive information about specific marketing plans from our member companies. It -- it wouldn't be

appropriate. We're a trade association and we have to represent them all, so we can't know of their individual marketing plans.

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Q. They tell you that they don't market to youth; don't they?
A. That is correct.
Q. That's what they tell you their plan is; right?
A. That is their policy. They tell us exactly what they do and don't do with respect to that policy.
Q. But if they were doing it, they weren't telling you what they were actually doing; were they?
A. All the information I've ever received from our member companies is that they don't market to youth.
Q. If they were doing this, they didn't tell you, did they, sir? "Yes" or "no."
A. Well that's correct, because we wouldn't have specific information on any marketing that the companies do.
Q. So what you do as a trade association, you just take their word. They say we're not marketing to youth and you don't get any specific information from them; correct?
A. We don't get specific marketing information about what the companies are doing. As I said, I -- I can't see how that would be appropriate for a trade

association that has to represent all of the companies.
Q. So you don't know one way or the other whether they're lying to you or deceiving you, do you, based on their own documents?
A. Based on my experience over the last 22 years with the industry, I don't believe I've been lied to, no, sir.
Q. No, that wasn't what I asked you.
Based on their own documents, you don't know if you're being lied to or not; do you?
A. I don't believe these documents show that I've been lied to, sir.
Q. You don't.
A. No, sir.
Q. Do you think this document shows that they're marketing to 16- and 17-year-olds?
MR. BLEAKLEY: Your Honor, I object, this is getting argumentative.
THE COURT: Well, you may answer that question.
A. Would you repeat the question?
Q. Sure. Do you think this document shows that Brown & Williamson was marketing to 16- and 17-year-olds?

A. That's not my impression, no, sir.
Q. It's not.
Well let's go to the next document and see if they report whether they were successful. Can you turn to Exhibit 13679.
Do you have that, sir?
A. Yes, I do.
Q. Have you ever seen this before?

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A. No, sir.
Q. This is from an advertising agency; isn't it?
A. It appears to be, yes, sir.
Q. It's a Brown & Williamson document; correct?
MR. BLEAKLEY: Objection, Your Honor. Mr. Ciresi knows that it is in fact a Ted Bates document, not a Brown & Williamson document.
Q. Produced by Brown & Williamson out of their files. You know that, sir?
MR. BLEAKLEY: Objection.
THE COURT: Rephrase --
MR. BLEAKLEY: How would Mr. Merryman know if it was produced by Brown & Williamson?
THE COURT: Rephrase the question, then, counsel.
BY MR. CIRESI:
Q. Do you see at the top it says "(B&W) PROTECTED

BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER?"
A. Yes, sir, I see that.
Q. Do you see over on the side it says "CONFIDENTIAL MINNESOTA TOBACCO LITIGATION?"
A. Yes, sir.
Q. Who's B&W?
A. That would be Brown & Williamson.
MR. CIRESI: Your Honor, we'd offer Exhibit 13679.
MR. BLEAKLEY: Your Honor, we do object to the receipt of this document. It is a third-party document, not a Brown & Williamson document.
MR. CIRESI: Again there was no objection pursuant to the court orders. It's a representative admission by the -- on the part of an agent. It's admissible under the business records exception, under the admission exception, the rule against hearsay, and it's to Brown & Williamson, as is indicated on the last page of the document.
MR. BLEAKLEY: It's not a representative admission, that's just argument, Your Honor. It's a document from an advertising agency, it is not a Brown & Williamson document. We don't deny that it was produced by Brown & Williamson during this case, but it is a document prepared by an outside

advertising agency.
MR. CIRESI: No objection to this document, Your Honor, and it's admissible under the rules I cited.
THE COURT: Was there any objection made, counsel?
MR. CIRESI: There was not.
THE COURT: Just -- I'm addressing my question to the --
MR. BLEAKLEY: I have to be honest, Your Honor, and tell you I don't remember whether there was or not.
THE COURT: Well I'll receive it at this

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time, and then if you could show me that there was an objection made, I'll strike it.

MR. BLEAKLEY: Fine. Thank you.

BY MR. CIRESI:

Q. Now this is the "Ted Bates new york/ advertising," it says in the upper right-hand corner?

A. Yes, sir, it does.

Q. And it's to Mr. M. O. Willson?

A. Mr. Willson, yes, sir.

Q. And if you go to the back page, you see carbon copies to Mr. Willots --

Do you know if he's the new product director at

Brown & Williamson?

A. No, sir, I don't.

Q. Do you know if Mr. Smoot is the product supervisor?

A. No, sir, I don't.

Q. And you see in the very first paragraph that B&W was being provided with the agency's analysis of the brand switching study?

A. It says something about a brand switching study, yes, sir.

Q. And it says that in the next paragraph, "It should be noted at the outset that Kool's two strongest market segments - the Black and young Smoker segments - are again under-represented in this wave of the study?"

A. That's what it says.

Q. Okay. And can you turn to the last page. I'm sorry, I misspoke, sir, the second-to-the-last page.

A. All right.

Q. Where it starts with "CONCLUSIONS."

A. All right.

Q. Number one, "Kool's effort against the 16 to 25 age group continues to be working. While the entire menthol category is above the industry average with this group, Kool continues to perform at an

exceptionally high level with both 85-millimeter and 99-millimeter sizes. Salem's share of this group is about half of Kool's. Only Newport 84 millimeter is on a level comparable to Kool's, and this we attribute to recent successes with the box in selected markets."

Did either Mr. Fitzgerald or Mr. Helewicz ever tell you that Kool's strategy marketing to 16- and 17-year-olds was working?

A. No, sir.

Q. Please take a look at the second conclusion. "Kool's effort is successfully attracting new smokers."

Once again, sir, new smokers are predominantly young; correct?

A. Well I don't know if new smokers is meant to convey young in this context. I don't know what the writer meant.

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Q. New smokers are predominantly young; correct?
A. People who start smoking for the first time might be considered to be in that category, but I don't know if that's what the writer meant here.
Q. Well let's read it. "While Kool's overall performance among the 16 to 25 age group is strong, it is not limited to this group in terms of starters.

Kool's starter level" --
That's who you think young people are, right, starters? Isn't that what you just said?
A. That's -- that's a definition that's been given to people under the age of 18 who start smoking.
Q. And that's what you just said because you want to say, "Well, I don't know who new smokers are. Starters are young people." Isn't that what you just said?
A. That's what -- that's what I said because that's what's been defined as starters by some people.
Q. Okay. And this writer reports, "Kool's starter level is well above the average among all age groups and both sexes, with particular strength evidenced among female starters. Salem starter level remains close to the total menthol average." Isn't that right?
A. That's correct.
Q. So Kool was very successful among starters in accordance with this exhibit; correct, sir?
MR. BLEAKLEY: Objection, Your Honor, he's asking the witness to characterize the document and speculate about what was meant and what was done.
THE COURT: Sustained.
Q. Sir, did either Mr. Fitzgerald or Mr. Helewicz

ever tell you that Kool's starter level was well above the average of other cigarettes?
A. No, sir.
Q. Now you recall the Philip Morris document that talked about the Magnificent Seven and the teen-agers and what they're influenced by?
A. I recall a document from Philip Morris that mentioned some of those things, yes, sir.
Q. Exhibit 11780, the one we just dealt with.
A. I don't recall the number.
Q. But you remember we just dealt with that; correct?
A. Yes, sir.
Q. And I'd like you now to go back to Exhibit 12408, which is in the first volume of the cross documents. This is Mr. Teague's memo.
It will be in a smaller volume, sir. It will say cross, volume one.
A. Can you give me that number again?
Q. Certainly. 12408. You'll recall --
A. All right.
A. -- we were talking about that with regard to pre-smokers or starters and people who were confirmed

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smokers, and that's what led us off into all these youth documents. Do you remember that?

A. I -- I can't characterize the document in any particular way. I remember that we talked about it.
Q. Okay. If you go to page four, maybe that will refresh your recollection.
A. All right.
Q. Remember I asked you, in looking at the bottom part of that page, whether Dr. Teague wasn't referring to both young people, starters, and confirmed smokers?
A. Yes, sir. Uh-huh.
Q. And from there we went into all these youth documents that we just talked about.
A. Yes, sir.
Q. Remember that?

Now if I could direct your attention, Mr. Merryman, to the sentence which says that the new smoker is unaware and has largely unexplained the nicotine and other physical and manipulative gratifictions of the cigarette. Do you see that?
A. I don't. Where are you?
Q. In the first full paragraph, it says, "He does not start smoking...." Do you see that?
A. All right.
Q. Okay. Right above that it says, "Paradoxically, the things which keep a confirmed smoker habituated

and 'satisfied,' i.e., nicotine and secondary and physical and manipulative gratifications, are unknown or largely unexplained to the non-smoker." Do you see that?
A. That's what he says, yes, sir.
Q. Okay. And Dr. Teague goes on to explain that the non-smoker does not start smoking to obtain these physiological gratifications; correct?
A. That's his view, yes, sir.
Q. And the non-smoker does not start to smoke to satisfy a non-existing craving for nicotine. Do you see that?
A. Yes, sir.
Q. And what's being referred to here are starter smokers; correct?

MR. BLEAKLEY: Objection, Your Honor. The witness has never seen this document. It speaks for itself. It either says that or it doesn't.

THE COURT: The objection is sustained.

Q. Do you know if what's being referred to are starters?
A. No, sir, I do not.
Q. Can't tell that by reading it; correct?
A. I do not know.
Q. Can you tell it from reading it, sir?

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A. No, sir, I cannot.
Q. All right. You do know that youth, based on your experience at the tobacco industry, tend to smoke -- or start to smoke for purely psycological reasons; don't you?
A. That's not my impression, no, sir.
Q. Do they tend to start to smoke to emulate a valued image?
A. It's my impression that those kids who start to smoke do so principally out of peer pressure.
Q. Well, so peer pressure would be one; is that right?
A. Yes, sir.
Q. To conform; is that right, conform to their peer group?
A. I think that would be another way of saying it, yes, sir.
Q. And that's what Dr. Teague reports here; correct?
A. That would be one thing, one reason why youngsters might start smoking, yes, sir.
Q. And another reason why they might is to experiment; correct?
A. That could be. I don't recall that I've seen a lot of comment on that particular area. It's mostly

having to do with peer pressure and the impact of siblings and parents.
Q. And with regard to parents, one of it might be to defy parents; correct?
A. "To defy" did you say?
Q. "Defy."
A. Yes, youngsters are quite often rebellious.
Q. And that's mentioned by Dr. Teague; isn't that right?
A. What are you referring to in specific, sir?
Q. To defy.
A. All right.
Q. To be daring, that's another reason why youth start smoking; correct?
A. That's what this document says.
Q. And that's consistent with your understanding; correct?
A. It is.
Q. Now if you go on to the next page, sir, does Dr. Teague, in speaking about the two types of smokers, one who's already smoking, and starters, outline the fact that the industry, then, has to design and promote the product to two different types of market with two different sets of motivations, needs and expectations?

A. He says that "leaves us," so I assume he's talking about what he thinks the companies ought to do.
Q. Correct.

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A. Yes, sir.
Q. And the companies spent, as you said, billions of dollars in advertising; correct?
A. They spend money on advertising and other marketing activities, yes, sir.
Q. Let me show you what's been marked Exhibit 30220, which are some of the Joe Camel ads of RJR.
Do you think these are directed to adults?
A. Yes, sir, I do.
Q. You do.
So your position would be these are not intended to be directed to youth; is that right?
A. Yes, sir.
Q. And you've never heard anyone at RJR say that they've done research on whether or not they were attractive to youth; is that right?
A. Whether R. J. Reynolds had done such research?
Q. Yes.
A. I don't recall it.
Q. They wouldn't share that with you because that would be an internal document; isn't that right?

A. Should be, yes, sir.
Q. Okay. And as you said, they don't share internal documents with you; correct?
A. They do not.
Q. Now can we direct our attention, sir, to Exhibit 18809, which is in volume two in front of you. This is a memorandum from William L. Dunn of Philip Morris.
Have you ever seen this document before?
A. I don't believe I have.
Q. Do you know Mr. Dunn?
A. No, I do not.
Q. Now I want to direct your attention, again, back to March of 1994 when you were making statements regarding the FDA's regulation of the cigarette as a drug. Do you have the time period in mind?
A. Yes, sir.
Q. And you were making statements publicly at that time; correct?
A. Yes, we were.
Q. Can you direct your attention to page five of this memorandum. In the second full paragraph, Mr. Dunn states as follows: "The cigarette should be conceived not as a product but as a package. The product is nicotine." Do you see that, sir?

A. That's what he says.
Q. Did Philip Morris tell you that in 1994?
A. No, sir.
Q. Did RJR tell you that in 1994?
A. No, sir.
Q. Did any of the defendants tell you that in 1994?
A. No, sir.
Q. Did you ever state that publicly in 1994?
A. No, I did not.

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Q. Do you know if The Tobacco Institute ever stated that publicly in 1994?
A. I'm relatively certain we did not.
Q. Did The Tobacco Institute ever testify to that in front of Congress in 1994?
A. By that, do you mean that the product is nicotine?
Q. Right.
A. No, sir.
Q. Did you put that out in a press release to your distribution list of news media --
A. We did not.
Q. -- in 1994?
A. No, sir.
Q. Did you ever do it before that time?
A. No, sir.

Q. Please move down a couple paragraphs to see where he says, "Think of the cigarette pack as a storage container for a day's supply of nicotine." Do you see that?
A. Yes, I do.
Q. Did you ever say that in 1994 when the FDA was considering -- or excuse me, when Congress was considering the regulation of cigarettes by the FDA?
A. No, we did not.
Q. Did any of the defendant companies ever state that, to your knowledge?
A. Not to the best of my knowledge, no, sir.
Q. Did you ever put that into a public release to be disseminated to the public with regard to the industry's knowledge?
A. No, sir.
Q. Did you have any discussion with anyone at Philip Morris with regard to whether or not it considered its product to be nicotine and the cigarette to be a day's supply of nicotine?
A. No, sir.
Q. Is that true right up to today?
A. I think we've discussed the issue in general terms, but I'm not certain that's what you mean.
Q. You discussed the issue of whether Philip Morris

considered its product to be nicotine?
A. The industry, not -- not the particular company.
Q. I'm asking about Philip Morris right now.
A. No, sir.
Q. You've never discussed that.
A. No, sir, not with Philip Morris.
Q. Did you ever discuss it with any of the other companies, right up to today?
A. No, sir.
Q. Can you turn to the next page, and at the top it says "Think of a puff of smoke as the vehicle of nicotine." Do you see that, sir?
A. I do.
Q. Did you ever discuss that with Philip Morris at

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any time right up to today?
A. No, sir.
Q. Did you discuss it with any of the other defendants right up to today?
A. No, sir, not that specific sentence or phrase, no, sir.
Q. Did The Tobacco Institute ever disseminate information that Philip Morris thought of a puff of smoke as a vehicle of nicotine?
A. No, sir.
Q. Did any of the other companies ever disseminate

that?
A. Not to the best of my knowledge.
Q. Did you ever discuss it with any of the other companies?
A. Not with respect to that specific sentence or the way it's used there, no, sir.
Q. Did you ever get any documents from any of the companies with regard to whether they considered a puff of smoke as a vehicle for the delivery of nicotine?
A. No, sir.
Q. Do you see right below number five it says, "Smoke is beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke?" Do you see that?
A. That's what it says, yes, sir.
Q. Did you ever discuss that with Philip Morris?
A. No, I don't believe so, sir.
Q. Did you ever discuss it with any of the other defendants?
A. Not to the best of my recollection.
Q. Did you ever testify in Congress that smoke was beyond question the most optimized vehicle of nicotine and the cigarette the most optimized dispenser of smoke?

A. No, sir.
Q. Did anyone from The Tobacco Institute ever so testify?
A. I don't believe so, no, sir.
Q. Do you know if anyone from the cigarette companies ever so testified?
A. Not to the best of my recollection.
Q. Do you know that people from the tobacco companies denied that nicotine was addictive in front of Congress under oath?
A. Yes, sir, they -- they stated that, that that was their belief, yes, sir.
Q. In 1994; correct?
A. Correct.
Q. Have they changed that?
A. I don't believe that our position has changed with respect to how we regard smoking and addiction.
Q. That's not what I asked you.
A. But I think that certainly there are people who

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disagree with how we regard it.
Q. That's not what I asked you.
Did any of the other companies ever testify that nicotine was addictive in front of Congress since 1994.
A. In front of Congress since 1994?

Q. Yes.
A. I don't know. Certainly none of our members have.
Q. Not even --
Is Philip Morris a member?
A. Yes.
Q. Is Brown & Williamson a member?
A. Yes.
Q. Is RJR a member?
A. Yes.
Q. None of them have testified in front of Congress right up to today that nicotine is addictive?
A. Not to the best of my knowledge.
Q. Well certainly you know that Liggett has admitted that nicotine is addictive; correct?
A. I understand that Liggett has made some representations, yes, sir.
Q. They put it right on their pack of cigarettes now; don't they?
A. Yes, sir, that's my understanding. I haven't seen the packages, but it's my understanding they intended to.
Q. Now were you in Congress within the last two weeks?
A. I beg your pardon?

Q. Were you in Congress within the last two weeks?
A. Was I in Congress? No, sir.
Q. You weren't.
Do you know if any of the chief executive officers of any of your member companies testified in Congress within the last two weeks?
A. Yes, I believe they did.
Q. And did they testify that nicotine was addictive?
A. I don't believe they testified that nicotine is addictive, no, sir.
Q. None of them?
A. I don't believe so.
Q. You're certain of that?
A. My recollection.
Q. Do you know why they were in front of Congress?
A. They were asked to present their views on this what's called worldwide settlement of issues, yes, sir.
Q. They wanted immunity; didn't they?
A. I don't recall what they asked for specifically in that testimony. I didn't watch it.
Q. Didn't you think that was something that might be of interest to you, who is stating a policy on

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cigarettes to the entire American people?

A. Well with respect to media inquiries or public inquiries on that issue, the tobacco industry has set up an entirely separate way of dealing with it and responding to it, and The Tobacco Institute is not part of that setup.
Q. That's not what I asked you.
A. Well I think -- I think it's responsive because The Tobacco Institute doesn't respond to inquiries about that subject.
Q. Well, Mr. Merryman, but that wasn't what I asked you. See if you can answer my question.
As a spokesman for this industry and its, quote, policies, end of quote, did you have an interest in seeing what the chief executive officers of your member companies were going to say under oath to Congress?
A. Yes.
Q. "Yes" or "no?"
You did.
A. Certainly.
Q. But you didn't watch it.
A. I did not.
Q. You didn't read about it.
A. I read about it, yes.
Q. You did.

And did you read that some of those executives testified that nicotine was addictive?
A. I don't recall that they testified nicotine is addictive, no, sir.
Q. Did they testify that smoking was addictive?
A. I don't believe that I recall --
I don't recall them testifying that smoking is addictive, no, sir.
Q. Now you do know that they were in there to attempt to get immunity for their past actions; don't you?
MR. BLEAKLEY: Your Honor, I think we've gone way beyond the capabilities of this witness, and I object to this line of questioning.
THE COURT: Well the objection as to that question is sustained.
Q. Did you read all their testimony?
A. No, I did not.
Q. Were you provided with a summary of it?
A. I read newspaper accounts of it and I looked at some of the testimony, but I certainly did not finish it all. It was a five- or six-hour hearing.
Q. Were you provided -- and by "you" I mean The Tobacco Institute -- with a briefing paper on this issue?

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A. If there was such a paper, I never saw it.
Q. By that do I take it to mean you don't know if The Tobacco Institute was provided with a briefing paper or not?
A. That is correct.
Q. Have you asked Mr. Chilcote what the executives testified to?
A. No, I have not.
Q. Have you had any discussion with him regarding that testimony?
A. I have not.
Q. Does The Tobacco Institute do anything other than represent policies of the tobacco industry?
A. We're their trade association, and that is our principal endeavor, to articulate the perspectives of the industry on a wide variety of issues.
Q. Well other than smoking and health, what other wide variety of issues do you articulate to the industry?
A. Taxation on -- on the product at the federal, state and local level; there are in many years hundreds of pieces of legislation on -- on increasing taxes on the product; proposals to ban or restrict smoking in restaurants or other places, there are likewise many, many legislative proposals to do that;

proposals to ban or restrict advertising of the product. Those are the main issues that we address. Smoking-and-health issues rarely come up and haven't for years.
Q. Is that the total of the issues that you address on behalf of the tobacco industry?
A. Well as I mentioned, those are the -- those are the main issues. I don't recall others, if they come up.
Q. Now you said that the testimony in Congress was with respect to a global settlement; is that right?
A. That's my understanding.
Q. Have you ever read it?
A. The settlement?
Q. Yes.
A. I know I have seen a 68-page document that may or may not be a summary of it. I don't know that I've read the whole thing.
Q. Did you read the summary?
A. Parts of it, yes, sir.
Q. And did you learn from there that the industry was seeking immunity from its past actions?
A. I don't recall if I learned that from reading that document.
Q. Do you know if the industry has taken a position

with respect to whether these documents we're seeing should be made public?
A. I don't know, sir.
Q. Didn't they testify in front of Congress that they would make them public if they got immunity?

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MR. BLEAKLEY: Your Honor, a witness who has testified before Congress is a matter of public knowledge and can be introduced here, if it's appropriate. This person is not the right person to do that. I object.
THE COURT: Well do you know the answer to the question?
THE WITNESS: I do not.
THE COURT: Okay.
Q. Can you turn, sir, to Exhibit 13344.
A. All right.
Q. Do you have it?
A. Yes, sir.
Q. This is a Brown & Williamson document?
A. It appears to be.
Q. Have you seen this before, sir?
A. No, sir, I've not.
Q. It's to Mr. Blott, who's a senior vice-president for domestic marketing, from Mr. Mellman, who is the director of consumer research, with carbon copies to

Mr. McCafferty, group product director, and Mr. Lewis, who is the director of international brands.
Do you know any of those individuals?
A. I do not, sir, no.
Q. Have you ever spoken with any of those individuals on the phone?
A. I don't remember speaking to any of them, no, sir.
Q. Can you turn to the next page. And this is "Relationship of nicotine level to switching behavior." Do you see that?
A. Yes, sir.
Q. "Nicotine is the addicting agent in cigarettes." Do you see that?
A. That's what it says.
Q. Now, did you ever have a discussion with anyone at Brown & Williamson wherein they stated that nicotine was the addicting agent in cigarettes?
A. No, sir.
Q. Did Brown & Williamson ever provide you any information that nicotine was the addicting agent in cigarettes so you could provide that to the public?
A. No, sir.
Q. Do you know if Brown & Williamson ever publicly stated before this year that nicotine was the

addicting agent in cigarettes?
A. No, sir.
Q. No, you don't know, or no, they didn't?
A. I don't believe they ever did, no, sir.
Q. If you were faced with a situation at The Tobacco Institute where one or two of your members said nicotine is addictive and the others said it wasn't, what would be your policy on dissemination of that information?
A. Well generally we operate, as I understand it,

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on a basis of consensus among our members. If there's no consensus, then there's no policy statement.
Q. They all have to agree before a statement is made; right?
A. Well I think you're going beyond what my understanding of how the Institute operates is since I'm not a administrative agent, but I think the way our operation usually is is that everybody has to agree on something before there is a policy statement. You know, I could be mistaken on that since I'm not involved in that sort of activity on a day-to-day basis.
Q. Can you think of one time in your 21 years where they didn't agree on a policy statement?

A. Well I wouldn't normally have been exposed to that kind of discussion since that would have taken place at committee meetings that I rarely, if ever, would have attended.
Q. So they all work in combination, don't they, sir, in making their statement.
A. The member companies of The Tobacco Institute certainly work in concert to develop positions, yes, sir.
Q. They combine together and make the statement; isn't that right?
A. Well if by that you mean they have to agree on a statement before it's issued, yes, sir.
Q. You do not at The Tobacco Institute put out conflicting or contradictory statements based on what one company may know as contrasted with another company; do you?
A. Well the statements and positions that The Tobacco Institute issues on behalf of its members obviously are reached as a result of the consensus that they come to, so it wouldn't -- it wouldn't conflict, obviously.
Q. If two member companies disagree, you don't put out the disagreement; do you?
A. No, sir.

Q. Never have in the 21 years you've been there; have you?
A. Our -- our policies are reached as a result of consensus and discussion, and then the policy statement is issued.
Q. Have to agree; correct?
A. That's my understanding.
Q. And The Tobacco Institute had a policy against stating that nicotine was addictive because it might affect lawsuits; isn't that right?
A. No, our -- our policy on smoking and addiction was made clear because, in my opinion from what I was told, that was supported in the scientific literature and it was a position we thought was an honest, accurate reflection of what was known and understood

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about -- about smoking and addiction.
Q. Sir, there was a policy not to admit addiction because you couldn't defend smoking as a free choice; isn't that right?
A. Well if -- if someone's addicted, then they don't exercise free choice. But that was never a policy statement that the Institute issued, nor was it a policy of the Institute.
Q. Well I know you didn't issue that, but that was an internal policy; isn't that right, Mr. Merryman?

A. No, sir.
Q. You were told that by your lawyers; isn't that right, sir?
A. No, sir, not that I remember.
Q. Can you turn to Exhibit 14303, please.
A. All right.
Q. This is a Tobacco Institute memorandum?
A. It appears to be.
Q. Mr. Kloepfer was a senior vice-president, public relations, in 1980?
A. He was at the time, yes, sir.
Q. And Mr. Knopick was an employee of The Tobacco Institute?
A. He was.
Q. And you were employed at that time; correct?
A. Yes, sir.
Q. And in 1980 the National Institute of Drug Abuse wanted "addictive" added to the cigarette warning; correct?
A. I don't recall what they wanted at that time.
Q. Does this memorandum reflect that?
A. That's what Mr. Knopick says.
Q. Do you have any reason to dispute that, based on your memory?
A. I -- I can't recall back that far to remember

what the National Institute on Drug Abuse wanted.
Q. Can you turn to the next page, sir.
Now Shook, Hardy is one of the law firms representing the defendants in this case; correct?
A. Yes, sir.
Q. And they'd been industry lawyers, as you said, for decades; correct?
A. They have represented tobacco companies for a considerable period of time, yes, sir.
Q. And if you direct your attention to the last four sentences, "Shook, Hardy reminds us, I'm told, that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as 'free choice' if the person was 'addicted'." Do you see that?
A. Yes, sir, I see it.
Q. And you knew about that policy; didn't you, sir?
A. This wasn't a policy of The Tobacco Institute, it was this writer's opinion.

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Q. You knew that Shook, Hardy had told The Tobacco Institute that; didn't you?
A. I knew no such thing.
Q. You didn't.
A. No, sir.

Q. But you do know that if the individual smoker is addicted, as you just said, he or she doesn't have free choice; correct?
A. If someone is unable to make the choice, is truly addicted, then there's -- there's no choice involved. However, I happen to disagree with the use of the word "addiction" in smoking.
Q. I didn't ask you that. I know what you feel; you've said it every time. And your lawyers will have a chance to ask you that.
If a person is addicted, he or she doesn't have a free choice; correct?
A. That is correct.
Q. And if a person starts smoking when they're young and they don't know about addiction, they can be trapped into addiction without knowing the consequences of it; correct?
A. I think it's very clear that people can and do quit smoking all the time.
Q. That's not what I asked you, sir.
MR. BLEAKLEY: Objection, Your Honor, he's interrupted the witnes's answer.
MR. CIRESI: Your Honor, Your Honor, it's non-responsive.
THE COURT: It is non-responsive.

MR. BLEAKLEY: But he's still entitled to finish his answer.
THE COURT: All right. Have you finished your answer?
THE WITNESS: Yes, sir.
THE COURT: Okay.
MR. CIRESI: May I have the question read?
(Record read by the court reporter.)
A. Accepting all of the assumptions inherent in that question, then yes.
Q. And if they stay addicted and the smoking causes lung cancer or emphysema, they might die from that addiction; isn't that right, sir?
A. If smoking were responsible for causing those diseases, someone who is a smoker might die from them, yes, sir.
Q. And the overwhelming majority of the people who start smoking are our young; correct, sir?
A. I don't know if I could characterize it that way. Certainly it's a large number, and too many.
MR. CIRESI: Your Honor, you want to take the break there?
THE COURT: All right. We'll recess for lunch, reconvene at 1:35.
THE CLERK: Court stands in recess, to

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reconvene at 1:35.
(Recess taken.)

AFTERNOON SESSION.
THE CLERK: All rise. Court is again in session.
(Jury enters the courtroom.)
THE CLERK: Please be seated.
MR. CIRESI: Thank you, Your Honor. Good afternoon, ladies and gentlemen.
(Collective "Good afternoon.")
BY MR. CIRESI:
Q. Good afternoon, Mr. Merryman.
A. Good afternoon.
Q. Sir, I'd like to direct your attention now to the policy statement that the TI made with regard to whether or not smoking causes diseases. You'll recall we touched on that briefly on Friday?
A. Yes, sir.
Q. Can you direct your attention once more to Exhibit 11028.
A. What volume is that in?
Q. That would be in volume one, sir.
A. All right.
Q. You'll recall that was the B.A.T. Company Ltd. trip report of a visit to the United States from April 17th through May 12th, 1958; correct?
A. Yes, sir.

Q. And you recall we looked at the itinerary and

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the number of companies and institutions that were visited by the three individuals from England; correct?
A. That's correct, yes, sir.
Q. Can you turn to page three, please. That's the number at the top, sir.
A. All right.
Q. See the reference as follows: "Otherwise we found general acceptance of the view that the most likely means of causation is that tobacco smoke contains carcinogenic substances present in sufficient quantity to provide lung cancer when acting for a long time in a sensitive individual."
Now sir, did American Tobacco ever tell you that during your tenure --
A. No, sir.
A. -- at The Tobacco Institute?
A. Not that I recall.
Q. Did Liggett ever tell you that during your tenure with The Tobacco Institute?
A. I don't believe so, no, sir.
Q. Did Philip Morris ever tell you that?
A. I don't think so, no, sir.
Q. Did any of the other defendants ever tell you

that?
A. Not to the best of my recollection, no, sir.
Q. Can you turn to page nine of that document, and I'd like to direct your attention to number three -- and this is part of the conclusions made by these individuals after they met with all of the institutions and companies listed on the itinerary. It states as follows: "The direct carcinogenicity of smoke condensate to animal tissue, which is consistent with direct causation, is now fully confirmed but the evidence so far obtained makes it unlikely that this activity is due to any single 'super carcinogen' in smoke." Do you see that?
A. Yes, I see that.
Q. Do you know how many carcinogens there are in smoke?
A. I do not, no, sir.
Q. Did you ever have any discussion on that with anyone from American?
A. I don't know if there was a specific discussion on that number with American Tobacco, no, sir. I don't recall that.
Q. Did you ever have a specific discussion with anyone from Philip Morris regarding that specific issue?

A. Regarding carcinogens identified in tobacco smoke? Yes, sir, we've had that discussion.
Q. And were you told that there were carcinogens in tobacco smoke?
A. Yes, sir.
Q. Okay. And did you have discussions with Liggett

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concerning that subject matter?
A. I don't recall discussions with anyone from Liggett on that subject.
Q. Did you have discussions with anyone from RJR on that subject matter?
A. I -- I believe I recall those, yes, sir.
Q. Did you have discussions with anyone from Brown & Williamson on that subject matter?
A. Not that I remember specifically.
Q. Did you have discussions with anyone from any of the other defendants regarding that subject matter?
A. There may have been with some representatives from The Council for Tobacco Research.
Q. Did the representatives from -- strike that.
Who from the Tobacco Council -- Council for Tobacco Research?
A. Dr. Sommers.
Q. When did you have your discussion with Dr. Sommers?

A. 1976.
Q. Did Dr. Sommers tell you that it was fully confirmed that there was direct causation between smoke condensate and cancer?
A. I certainly don't recall him having said that, no, sir.
Q. Did any of the defendants ever tell you at any time from 1958, the date of this document, forward that the direct carcinogenicity of smoke condensate to animal tissue which is consistent with direct causation is now fully confirmed?
A. No, sir, I don't believe so.
Q. Did you ever state to the public on behalf of the industry that the direct carcinogenicity of smoke condensate to animal tissue which is consistent with direct causation was fully confirmed?
A. No, sir.
Q. Do you know if any of the other defendants ever made such a statement from 1958 up to the present time?
A. I'm not aware of it, no, sir.
Q. Sir, can you direct your attention to Exhibit 12581.
A. All right.
Q. This is a survey of cancer research by Claude

Teague, Jr., dated February 2nd, 1953. Have you ever seen this document before?
A. I don't know if I have or not, Mr. Ciresi. It doesn't seem familiar.
Q. Do you know if you saw it in preparation for this litigation?
A. It is possible I did. However, I cannot be certain.
MR. CIRESI: Your Honor, we'd offer Exhibit 12581.
MR. BLEAKLEY: No objection, Your Honor.

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THE COURT: Court will receive 12581.
BY MR. CIRESI:
Q. Title is "SURVEY OF CANCER RESEARCH with emphasis upon POSSIBLE CARCINOGENS FROM TOBACCO" by Claude E. Teague, Jr., 2 February 1953.
This is about, what, 11 years before the Surgeon General's report in 1964?
A. Approximately, yes, sir.
Q. Can you turn to page 14, the conclusion section. I want to read part of that to you and ask you some questions. Quote, "The increased incidence of cancer in the lung of man which has occurred over the last half century is probably due to new or increased contact with carcinogenic stimuli. The closely

parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important etiologic factor in the induction of primary cancer of the lung."
First of all, what's an etiologic factor, if you know?
A. I believe it has to do with causation.
Q. It's a factor that causes something; correct?
A. I can't say for certain. I don't know.
Q. I'll read on. "Studies of the clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and the incidence of cancer in the lung."
Sir, did Mr. Teague of RJR or anyone from RJR ever tell you that in 1953 they had done an analysis in which they concluded that studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer in the lungs?
A. I don't recall ever hearing of Mr. Teague's opinions on the subject, no, sir.
Q. Did you hear anyone from RJR say that?
A. No, sir.
Q. Did you hear anyone from any of the other defendants say that?

A. No, sir.
Q. That would be right up to today; correct, sir?
A. Correct.
Q. Would it be fair to state that The Tobacco Institute has never stated publicly that studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer in the lung?
A. I don't recognize that as a statement The Tobacco Institute has ever made, no, sir.
Q. Do you know if The Tobacco Institute has ever said that some of our member companies knew that as early as 1953, eleven years before the first Surgeon General's report?
A. I don't recall the Institute ever making a statement to that effect, no, sir.

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Q. You don't recall any of the defendant companies ever making such a statement either; do you, sir?
A. No, sir, I do not.
Q. Can you take a look at the paragraph directly above that, "Tobacco Additives." Do you recall last Friday we were talking about the duty of a company to investigate hazards with respect to its product?
A. Yes, I recall that.
Q. And in order for a company to investigate

hazards, would you agree with me that the investigator must know what additives are in the product?
A. I suppose that's one of the things that he might want to know.
Q. Well you wouldn't know how to investigate the additive unless you knew what the additive was; correct?
A. Well that's true. That's certainly true.
Q. And Mr. Teague didn't have access to that information; did he?
A. I don't know. If I can read this for a moment, maybe we can see.
Q. Take a look under "Tobacco Additives." "In the manufacture of tobacco products a number of organic materials are added to the leaf tobacco. Such additives are flavorants, humectants and like substances. It is possible that one or more of these materials may give rise to carcinogenic substances. The writer does not have access to information as to the additives used and is therefore unable to evaluate them." Is that right?
A. That's what he says, yes, sir.
Q. But if a scientist were going to evaluate them, he or she would need to know what they were; correct?

A. Yes, sir.
Q. And does Mr. Teague in the last line under "CONCLUSIONS" report that he couldn't determine whether or not additives produced any carcinogenic role because he didn't have access to the information?
A. He says he does not have access to the information, that's true, sir.
Q. Can you direct your attention, sir, to Exhibit 13555, which is a Brown & Williamson document dated 1952.
A. All right.
Q. Have you ever seen this document before, sir?
A. It's not familiar to me, no, sir.
Q. Do you recall if you looked at this with regard to preparing to testify here?
A. I don't believe I did, no, sir.
Q. You can see that it's a Brown & Williamson document; correct?
A. That's what it appears to be.
MR. CIRESI: Your Honor, we'd offer Exhibit

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13555.
This may be in.
It is admitted, Your Honor.
BY MR. CIRESI:

Q. Mr. Merryman, the title of this is "REPORT OF PROGRESS - TECHNICAL RESEARCH DEPARTMENT, 24 DECEMBER 1952." Twelve years before the Surgeon General's report; correct?
A. Yes, sir, approximately.
Q. Can you turn your attention to page nine, and I'm referring to the number at the bottom.
A. All right.
Q. And do you see in that paragraph that the author is referencing the fact that the Brown & Williamson lab had made a partial isolation and identification of benzopyrene?
A. Yes, sir.
Q. Do you know what an aromatic hydrocarbon is?
A. Don't know if I can respond to that very well. I don't actually know, no, sir.
Q. They're highly carcinogenic; are they not?
A. I don't know that.
Q. Do you know what a benzoid ring is?
A. I'm sorry?
Q. Benzoid ring.
A. No, sir.
Q. And it's reported here that benzopyrene in both smoke and original tobacco from Raleigh blend cigarettes had been isolated and identified; correct?

A. Yes, sir.
Q. And the paragraph below that states, "A most important factor is that no investigator has accurately established what causes cancer and no one has proved that the chemical agents, like benzopyrene, which cause cancer in animals will definitely cause cancer in humans." Correct?
A. Yes, sir.
Q. But of course today we know that benzopyrene causes cancer in humans; don't we?
A. No, sir. I don't believe that's -- that has been established.
Q. Never been made aware of that.
A. I don't believe that's been established.
Q. Have you ever heard of the P-53 gene?
A. I don't think so, no.
Q. Do you know what the tumor-suppressant gene is?
A. No, sir, I don't.
Q. Do you know if it's been reported in the literature that benzopyrene binds to the P-53 gene in the same spot where cancer develops?
A. No, sir, I'm not aware of that.
Q. Are you aware that it's been reported that the mechanism by which that does is it binds to the DNA in the nucleus of a cell?

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A. That's not something I know anything about, sir.
Q. Nobody ever told you that from any of the companies?
A. I don't recall ever hearing that, no, sir.
Q. Shook, Hardy never told you that?
A. I don't recall hearing it, sir.
Q. Nobody at The Tobacco Institute ever told you that?
A. It's not familiar to me, sir.
Q. Well if that had been reported, that would be a mechanism, as you use the term; wouldn't it?
A. I don't know, sir.
Q. Just don't know.
A. I'm not that well versed in -- in science to be able to answer that question.
Q. Well what would you need to know whether something was a mechanism or not?
MR. BLEAKLEY: Objection, Your Honor, this witness is not qualified to answer a question like that.
THE COURT: You can give --
I think you'll have to rephrase that if you want him to give his definition.
MR. CIRESI: Yes. I'm just asking for his definition.

THE WITNESS: Could you repeat it, sir?
MR. CIRESI: Sure. Could you read the question back, please.
(Record read by the court reporter.)
A. I think that it would have to be identified by scientists and published in the scientific literature and replicated to establish that something caused a previously normal, healthy cell to become malignant or cancerous. You know, I answer that as a layman without any scientific background, and that's what it means to me.
Q. And if that was reported in the literature, then you would say that cigarette smoking does cause cancer; correct?
A. Well having a -- a report in the literature certainly is interesting information, but I think that most scientists agree that a single report is something that has to be confirmed, reconfirmed, replicated, before there's any consensus about what it means.
Q. How many of those reports would you need before you'd say cigarette smoking causes cancer?
A. Well again, I don't think it's up to me to make that decision as a layman. I think that science has to in the end make that -- that -- that

determination.
Q. How many scientists would you want saying that?

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Let's assume there's a hundred scientists out there. How many of those would need to say that before you would accept it?

MR. BLEAKLEY: Objection, Your Honor, asked and answered.

THE COURT: Well, I think you're asking him an improper hypothetical.

Q. Well sir, you know that you are standing alone. I think you said you're the lone soldier, the industry, in saying that cigarette smoking doesn't cause cancer. Isn't that what you said?

A. Well I said that I didn't know of any organizations that took that viewpoint.

Q. Okay.

A. I think there are -- there's adequate support for our view in the scientific literature.

Q. How many scientists in your judgment do you need to have adequate support to deny that smoking causes cancer?

MR. BLEAKLEY: Objection, Your Honor.

THE COURT: Sustained.

Q. Well you make these decisions on your own; don't you?

A. I make what decisions on my own, sir?

Q. As to whether you believe smoking causes cancer.

A. Well I -- I make decisions based on a review of the scientific literature and --

Q. Do you rely --

Do you rely solely on what somebody else tells you to make that decision?

A. Well we're presented with a great deal of scientific information on this subject. I think that taking the position I take on behalf of the industry is responsible and it is supported in the scientific literature.

Q. That's not what I asked you.

Do you rely on other people or do you make that decision yourself?

A. I rely on other people for information.

Q. And that information for you comes from the lawyers; correct?

A. I get information from the companies, I get information from the scientific literature. Certainly we communicate with the lawyers.

Q. Do you read the scientific literature?

A. I do not personally, no.

Q. Okay. So you get it from the lawyers and you get it from the companies; correct?

A. We get some information from the lawyers, we get some information from the companies, yes, sir.

Q. And the information you get from the companies is not from the scientists and it's not from the CEOs, it's from their public relations departments; correct?

A. Well I should also add that we do get scientific

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information at The Tobacco Institute. I may not personally read it, but we do receive it. We get information from the companies, from the people with whom I normally would have contact on a day-to-day basis, and those would be people in the public relations division normally.
Q. All right. So the answer to my question is yes, you get it from the public relations department, not from the scientists or the CEOs; correct?
A. It's correct to say that I don't have contact regularly with those people, yes, sir. I wouldn't as a normal course of business.
Q. Okay. And have you ever received any scientific information regarding smoking and health from scientists within the companies? You yourself?
A. I can't say I never have. It's possible, but I cannot sit here today and specify a piece of information that I may have gotten.

Q. So the only source that you can recall that you get information from within the companies is the public relations departments; correct?
A. Yes, because that's the normal way that I make contact with people at the companies.
Q. Now would the Frank Statement, in your judgment, require the companies to say that they found cancer-causing constituents in cigarette smoke?
A. I don't -- I don't know that. I don't know what the Frank Statement would require a company to do.
Q. Well, as a spokesperson for the industry and with regard to the undertaking that "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business. We believe the products we make are not injurious to health. We have always and always will cooperate closely with those whose task it is to safeguard the public health," with regard to that, sir, in discharging your responsibility as a spokesperson for the industry, would you be required to tell the public that there's cancer-causing materials in cigarette smoke?
A. I don't think I'd be required to tell people something they already believe, no, sir.

Q. Excuse me, that wasn't my question, whether they believed or not. I'm asking you whether or not you would have a responsibility as a spokesman for the industry to get that information out if the company knew it. "Yes" or "no?"
A. I missed the last phrase of your question.
Q. "If the company knew it."
A. What information?
If the company knew it?
Q. Yes.
A. Well it depends on what the information is. There are certain --

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Obviously The Tobacco Institute, as the trade association for the industry, is going to communicate with the public about the industry's positions on issues. If the company makes a decision to release internal information, that is that individual's -- individual company's decision.
Q. If the company gave you that information, would you release it to the public? Let me ask it that way.
A. If they gave us the information and asked us to release it, I see no reason why we shouldn't or wouldn't.
Q. Would you have released the information if the

public -- if the companies would have given you that information?
A. I don't know. You're asking me a hypothetical question in the absence of any other things that might be present. I just don't know.
Q. Well let me -- let me make it simple for you. Let's assume that a company comes to you and says, "Mr. Merryman, here, we have this information. Give it to the public." Would you do it then?
A. I guess so. I don't know what else might be going on at the time, but it seems like a reasonable proposition generally.
Q. Would you say, "Well wait a minute, I got to check with the rest of the companies and see if they want me to release this information of yours?"
A. Well, I think that an individual company would probably want to release its own information rather than release it through The Tobacco Institute.
Q. That's not what I asked you.
A. I think -- I think if there was something that one company came up with that was -- or might present a conflict with other companies, they'd have to discuss it and reach a consensus.
Q. That's not what I asked you, sir.
Let's assume I'm Liggett or Philip Morris.

A. Uh-huh.
Q. Any of the companies. If I came to you and said, "Here, Mr. Merryman, you're a spokesman for this industry, I have this information, I want you to disseminate it in the same way you disseminate all this other information," would you do it?
A. If it represented a consensus within the industry, if the other companies decided this was something that the industry wanted to say, we represent the voice of the industry on issues that are in common with the companies and on which they reach a consensus.
Q. I guess your answer is no, you wouldn't do it unless everybody else agreed; right?
A. I think the consensus is an important part of a trade association, so there would have to be agreement among the companies, yes, sir.

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Q. Is the answer to my question yes?
A. It appears to be, yes, sir.
Q. Thank you.
Now can you direct your attention to Exhibit 11561. It's a Liggett document. Have you seen this before?
A. I believe I have.
Q. Dated March 15th, 1961?

A. Yes, it is.
Q. It's by Arthur D. Little, Inc.; correct?
A. Correct.
Q. They were one of the people that were visited in the trip report which we saw, Exhibit 11028; weren't they?
A. I think that's right.
Q. When the folks came over from England, they visited Arthur D. Little and got their opinions; didn't they?
A. Apparently they did. They say they visited there.
MR. CIRESI: And Your Honor, we'd offer Exhibit 11561.
MR. BLEAKLEY: No objection.
THE COURT: Court will receive 11561.
BY MR. CIRESI:
Q. If you could direct your attention to the first paragraph. "There are biologically active materials present in cigarette tobacco." Do you know what "biologically active" means?
A. I don't know what scientists mean when they use that term.
Q. But in your 21 years of dealing with the issue of smoking and health on behalf of the tobacco

industry, you've heard of the term "biologically active;" haven't you, sir?
A. I've heard it, yes.
Q. And that means cancer-causing; doesn't it?
A. I don't know that to be a fact.
Q. You've heard it described that way; haven't you?
A. I can't say I actually have, no.
Q. Just don't remember one way or the other; is that right?
A. I do not.
Q. Okay. And if you take a look at the next part of that, "These are, a), cancer causing, b), cancer promoting, c), poisons, d), stimulating, pleasurable, and flavorful." Okay?
Now Mr. LeBow is sitting right over here. Let's assume he as the CEO of Liggett comes in and tells you, "Mr. Merryman, I just found this document. We knew in 1961 that cigarette smoke was cancer-causing. I want you to tell the public." Would you do that or would you check with everybody else before you did it?
A. Well I think as a -- as a trade association we'd

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have to have the views of our other member companies. We'd also have to know exactly what the authors of this document meant. We'd have to have some -- some

consensus within the industry for The Tobacco Institute to say anything on behalf of the industry.
Q. Sir, the CEO of the company, you told me last Friday they make the decisions; right?
A. They make decisions for their companies, yes, sir.
Q. The buck stops there; correct?
A. Yes.
Q. The CEO, Mr. LeBow, he comes in and he says, "Mr. Merryman, I have found a document. I want you to tell the public that since 1961 we knew cigarette smoke was cancer-causing." Are you saying that you would say, "Wait a minute, I got to check with the rest of the folks and see if they agree with you?"
A. We're a trade association. We represent all of our member companies, not just one. We have to have some sort of consensus in order to do business in a non-chaotic way.
Q. When did you tell the public, at any time in the 26 years you've been with The Tobacco Institute, that if one company said cigarette smoking caused diseases, that you wouldn't disclose it unless everybody agreed? When did you say that?
A. I don't know that anyone ever asked me that question.

Q. You never ever said that; did you, sir?
A. No, I don't recall it.
Q. What if two of the companies said it was cancer-causing, would you get it out then, or would you still need all six to say it was cancer-causing?
A. It's my understanding that the -- the consensus has to be unanimous for a policy change within the Institute. I don't -- I don't think that that's incorrect. I believe that there has to be unanimity.
Q. So if five of these manufacturing companies came up and said, "We are causing cancer," you would not say anything until the last holdout said we agree; is that right?
A. It's my understanding that The Tobacco Institute, as the trade association, operates that way. Wouldn't prevent the companies from doing whatever they wanted to do individually.
Q. What if five of the six companies came up and said, "We are causing cancer and we're marketing to youth and we have to stop, and I want this information out in the public, we want to come clean," would you get that out or would you wait for all six to say it?
A. Again, I think that as the trade association for the tobacco product manufacturers, we have to operate

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on the basis of consensus. I don't see anything that would prevent individual companies from saying whatever they wished.
Q. Mr. Merryman, would it make any difference to your opinion whether a million, two million, five million people were dying from the disease? Would you still maintain that position?
A. Given the fact that the public is extremely well informed about the health charges against smoking and it's a legal product, I think the position that I take on behalf of the Institute and the industry is very reasonable.
Q. Given the fact that the vast majority of smokers who start are kids, you still think that position is very reasonable; is that right?
A. I know that a lot of people quit smoking, 90 percent of those who do apparently quit on their own.
Q. That's not what I asked you.
A. It's a decision that you can make as an individual. I think that it's proper and appropriate for the Institute to take the position it does, and I just don't know how else to answer your question.
Q. Sir, that's not what I asked you. I know you want to give those answers because that's the -- that's the policy, that's what you want to say.

A. That's what I feel.
Q. But your lawyer will have a chance to ask you your policy and you can repeat it all the time. My question wasn't that, wasn't that at all.
Would you maintain that position even though the people who are starting are the children of America? Would you maintain that position until all six agreed? "Yes" or "no."
A. Would I maintain what position, sir?
Q. That you wouldn't get the information out unless all six of these defendants agreed that it should get out.
A. As a trade association, we are acting at the behest of our members and what they decide to do. Again, if they wish to do something individually, they're certainly powerful enough to do that.
Q. So that even if there was a consensus that you told me about last week of five of six people, you simply wouldn't get the information out; would you?
A. As I said, I believe it is our policy to operate on a consensus, and the members of The Tobacco Institute have to agree on a policy or a policy change before any is taken.
Q. Can you direct your attention to Exhibit 18187. It's this volume two, sir.

It's an RJR document, Alan Rodgman, dated 1962, THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE ANALYSIS OF THE SMOKING AND HEALTH

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PROBLEM." Have you seen this document before?
A. I believe I may have seen it in preparation for the litigation.
Q. And this was a document that you had not seen before this litigation; correct?
A. That's correct.
Q. And the document predates the first Surgeon General's report in 1964 by two years; correct?
A. Yes, it does.
Q. And Mr. Rodgman in this document looks at the epidemiological literature to determine whether or not there's evidence that smoking causes disease; correct?
A. Well not having thoroughly read it and certainly not looked at it recently, I can't say that that's an accurate characterization. I just don't know what it's -- what -- what he's doing here.
Q. Well would you accept that representation, that he's looking at the epidemiological data?
A. All right.
Q. And if you want to confirm that, you can look at page two at the top, you will see "Epidemiological

Data."
A. I see where he has "Epidemiological Data" as a subheading.
Q. And he's --
And the report itself deals with investigating the smoking-and-health lung-cancer problem epidemiologically, pathologically, biologically and chemically; correct?
A. Yes, sir.
Q. Now if the industry came to you, and again, anybody less than -- or any number less than six of the manufacturers, and they said, "Mr. Merryman, the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming and the evidence challenging such an indictment is scant, we want you to get the word out using all the media that we use so the children know," would you do it?
A. If our member companies asked us to take a position, we certainly would do so.
Q. Have to be all six though; right?
A. That's -- that's the way we operate, as I understand it.
Q. Can you direct your attention to page seven of this report from 1962.
MR. CIRESI: And we'll offer Exhibit 18187,

Your Honor.
MR. BLEAKLEY: No objection, Your Honor.
THE COURT: Court will receive 18187.
BY MR. CIRESI:
Q. First of all, we have the title page up, it's "A CRITICAL AND OBJECTIVE ANALYSIS - APPRAISAL OF THE SMOKING AND HEALTH PROBLEM." Can you turn to page seven. Do you see there "The Evidence To Date?"

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A. I do, yes, sir.
Q. Let me read that. "Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such an indictment is scant." See that?
A. Yes, I do.
Q. And in the 1960s the industry was saying there was a controversy about smoking causing cancer; wasn't there?
A. The tobacco industry has maintained that there is a controversy, yes, sir.
Q. And in the 1980s it maintained that; didn't it?
A. Yes, sir.
Q. And in the 1990s it maintained that; didn't it?
A. Yes, sir.
Q. Did anybody from Philip Morris come up to you at any time that you've been at The Tobacco Institute

and say, "Mr. Merryman, we knew, we knew internally back in 1962 that the amount of evidence accumulated to indict cigarette smoke as a health hazard was overwhelming and the evidence challenging such an indictment was scant?" Did they ever?
A. No, sir, no one told me of this man's opinion on the subject, no, sir.
Q. Did anybody from Philip Morris or any of the other companies come up and tell you that?
A. No, sir.
Q. And if they did, you wouldn't have gotten the information out unless all six agreed; correct?
A. One man's opinion on what the information says? No, sir. I mean certainly we'd need a great deal more than that.
Q. Do you think Mr. Rodgman retracted this?
A. I have no idea.
Q. Do you think anybody else in RJR said this wasn't true?
A. All I know is it's what is -- what he has attributed -- what's attributed to him as his opinion.
Q. And if five of the six companies came up to you and said that, you'd do nothing; correct?
A. I wouldn't say do nothing, but I think that, as

I've mentioned before, as a trade association representing our members, in order to operate, we have to have consensus from our members to take a policy --
Q. With all --
A. -- take a stand on something.
Q. With all due respect --
A. And if a company came to a different conclusion on one particular issue and wished to issue a policy statement on its own, I assume they could do so.
Q. With all due respect --
And they never did do so; did they, sir?
A. They certainly didn't issue a statement such as

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you just read here.
Q. And with all due respect, Mr. Merryman, what you've done for 21 years -- and I don't mean this derogatorily to you as an individual -- you've done the bidding for the industry; haven't you? You've done what they told you to do.
A. I've been an employee of The Tobacco Institute, which is the trade association for the companies, so obviously I speak on their behalf.
Q. So long as you got paid year after year, you did exactly what they told you to say; isn't that right?
A. Well certainly as an employee I'd be expected

to -- to do as instructed.
Q. Do as instructed. And that's what you've done; correct, sir?
A. Yes, sir. And honorably.
Q. And what?
A. Honorably.
Q. Honorably.
Can you turn to page 13. Do you think a company should hide information to justify the position they're taking publicly?
A. I don't think that's a good idea, no.
Q. You think it's wrong?
A. I don't think that --
MR. BLEAKLEY: Objection to the use of the word "wrong," Your Honor. Are we talking legal, are we talking a personal opinion?
MR. CIRESI: Well I'll rephrase it.
THE COURT: Rephrase it, please.
Q. Do you think it's honorable?
A. Have you finished --
Did you finish the question?
Q. I did indeed.
A. I don't think it's honorable to hide information that may be important that people don't know, people haven't heard, aren't aware of. Certainly I think

there's justification for keeping trade secrets and proprietary knowledge confidential, and I think that internal documents many times can fall into that category.
Q. Well let's take a look what -- the issue Mr. Rodgman posed in 1962. "Members of this research department have studied in detail cigarette smoke composition." Do you see that?
A. Yes, I do.
Q. And he cites references which are at the back of the document; correct?
A. There are some citations, yes, sir.
Q. And those citations are to internal documents; correct?
A. I don't know. I'd have to look at each one of them, and I haven't.
Q. Well take a look back. Take a look at eight and nine. It's on page 16 at the top, sir.

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A. All right.
I don't know what those are.
Q. Well they're internal documents; are they not?
A. I don't know that.
Q. Okay.
A. There's no identification of exactly what they are.

Q. Do you see any citation to a publication?
A. Not for those two.
Q. All right. Now, can you go on to the next sentence. "Some of the findings have been published." Do you see that?
A. Yes.
Q. "However, much data remains unpublished because they are concerned with carcinogenic or cocarcinogenic compounds or with patentable material." Do you see that?
A. Yes, I do.
Q. Mr. Rodgman goes on to state, "This raises an interesting question about the former compounds." That would be the carcinogenic or cocarcinogenic; correct?
A. Apparently that would be what he's referring to, yes, sir.
Q. "If a company pled 'not guilty' or 'not proven' to the charge that cigarette smoke (or one of its constituents) is an etiological factor in the causation of lung cancer or some other disease, can the company justifiably assume the position - that publication of data pertaining to cigarette smoke composition or physiologic properties should be withheld because such data might adversely -- affect

adversely the company's economic status when the company has already implied in its plea that no such etiologic effect exists?" Do you see that?
A. Yes, sir.
Q. And what he's talking about there is secreting, hiding information that would indict because the company took a position that smoking doesn't cause disease. That's what he's referring to; isn't it?
MR. BLEAKLEY: Objection, Your Honor. Mr. Merryman can't possibly know what they were referring to. The document speaks for itself.
THE COURT: The objection is sustained. You'll have to rephrase it.
Q. Sir, if I wrote such a statement, what would you conclude by such a statement?
A. Well given the entire statement, I'd conclude you were making some charges which may or may not have foundation. I don't know anything about the situation at the company when this was written. I don't know if he is correct when stating that the data remain unpublished because they are concerned with carcinogenic or cocarcinogenic compounds. I simply don't know that.

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Q. You know RJR never ever said that smoking causes cancer; don't you?

A. I don't recall ever hearing anyone from R. J. Reynolds say that smoking is a cause of cancer.
Q. You didn't ever hear anyone from R. J. Reynolds say, "We had in our files research in 1962 showing that cigarette smoke contained particles and substances and compounds that could cause cancer."
A. No. I don't remember them issuing a statement about this gentlemen's opinion, no, sir.
Q. I didn't ask about this gentlemen's opinion. I asked whether they ever said that they had such information in their files and knew it. Did they ever make such a statement?
A. I don't recall hearing anyone from R. J. Reynolds make such a statement, no, sir.
Q. In fact, you don't know of any company that's ever made such a statement; do you?
A. None of our member companies have made such a statement, no, sir.
Q. But you do know that the policy that you've had to endorse and articulate and spread throughout this country over 20 years was one of creating doubt about the health charge without actually denying it; don't you?
A. That's not the way I have ever understood the way the Institute operates, no, sir.

Q. You've never been the president of the organization; have you?
A. No, sir.
Q. Mr. Kornegay was the president; wasn't he?
A. Yes, sir, he was.
Q. Was he an honorable man?
A. Very much so.
Q. Is he one who implemented the policy of The Tobacco Institute?
A. He was the president and CEO of the Institute, so he would have been responsible for implementing policies, yes, sir.
Q. And he implemented them vigorously and in accordance with the policy?
A. He implemented the policies that the member companies had articulated, yes, sir.
Q. And he used all the news organizations that we outlined on last Friday to disseminate that policy throughout this country for over 20 or 30 years; correct?
A. I think that overstates our -- our ability to use the news media, but certainly we made our views available to the news media.
Q. And you know Mr. Panzer; don't you?
A. I do.

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Q. He was vice-president?
A. Yes, he was.
Q. Is he still with the company?
A. No. He's retired.
Q. Did you consider him an honorable man?
A. I think Mr. Panzer is an honorable man, yes.
Q. Did you think that both Mr. Panzer and Mr. Kornegay, when they wrote things, they wrote honestly?
A. I think probably they did.
Q. When they wrote to each other they'd be honest with each other; wouldn't they?
A. I don't know. I guess they would.
Q. Well you wouldn't think they'd lie to each other; would you?
A. No. I don't know what they would do.
Q. Well did you ever know them to lie to each other?
A. No, no, I've never known them to lie to each other.
Q. Okay.
A. But then I've not been privy to all their conversations and writings.
Q. Can you direct your attention to Exhibit 20987. This is a memo dated May 1, 1972, to Horace R.

Kornegay, president, from Fred Panzer, vice-president; correct?
A. It's to Mr. Kornegay from Mr. Panzer, yes, sir.
Q. Those are the two folks we were just talking about; correct?
A. That's right.
Q. They wouldn't lie to each other; would they?
A. I don't know what they'd do.
Q. And if you look down this exhibit, Mr. Panzer is giving his general comments; correct?
A. Mr. Panzer is giving his -- his opinions, yes, sir.
Q. Uh-huh. And he's talking about an opportunity to take the initiative in the cigarette controversy and start to turn it around; isn't he?
A. That's what he says he believes.
Q. Well, did you ever see a memo back from Mr. Kornegay to Mr. Panzer saying what you said in here is false? Did you ever see that?
A. No. I never saw this memorandum until litigation.
Q. But did you ever see one back saying what Mr. Panzer said is false?
A. No. I think Mr. Kornegay is able to respond for himself on that score.

Q. None of the tobacco lawyers ever showed you such a document; have they?
A. No, sir.
Q. And Mr. Panzer states, "For nearly twenty years,

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this industry has employed a single strategy to defend itself on three major fronts - litigation, politics, and public opinion." Correct?
A. That's what he says.
Q. And the 20 years takes us back to 1952; correct?
A. That would be correct.
Q. Twelve years before the Surgeon General's first report; correct?
A. Yes, sir.
Q. During the period of time that we've seen many of these documents about the internal knowledge of the companies; correct?
A. Yes, sir.
Q. And Mr. Panzer tells Mr. Kornegay about that policy, "While the strategy was brilliantly conceived and executed over the years helping us to win important battles, it is only fair to say that it is not - nor was it intended to be - a vehicle for victory. On the contrary, it has always been a holding strategy, consisting of," number one, "creating doubt about the health charge without

actually denying it." Correct, sir?
A. I can't agree with your characterization of it. It certainly is Mr. Panzer's opinion, but I don't believe, based on my personal experience of 22 years at the Institute, that this was ever policy at the Institute or within the industry.
Q. Sir, that's what Mr. Panzer says; correct?
A. That's what he claims.
Q. That's what he says to the president; correct?
A. That's what he says.
Q. And you don't know of any document where the president said, "Mr. Panzer, balderdash, that's not true, we've tried to be truthful," you haven't seen anything like that; have you?
A. I've seen nothing like that. I can only say that, based on my experience, Mr. Panzer didn't know what he was talking about.
Q. But you've never seen anything coming back saying we've always tried to get out all the facts, the full truth. I think that was your words, the full truth. You didn't see anything like that from Mr. Panzer back -- or Mr. Kornegay back to Mr. Panzer; did you?
A. Well I didn't have to. Mr. Kornegay certainly made it clear on any number of occasions --

Q. Sir --
A. -- that he thought our mission at the Institute was to be truthful and honorable.
Q. I'm sure that -- that you think that may be what the mission was, but we don't have anything in writing where he responds to Mr. Panzer saying that this is false; do we?
A. I've not seen it.
Q. No.

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A. But that's my --
Q. So we can't test -- we can't test your assertion here in court today about what Mr. Kornegay said by any document that would have refuted what Mr. Panzer said when they didn't think the document was going to see the light of day.
MR. BLEAKLEY: Objection, Your Honor.
Q. We don't have that; do we?
MR. BLEAKLEY: It's being argumentative, Your Honor.
THE COURT: It is argumentative.
MR. CIRESI: I'll withdraw the question.
BY MR. CIRESI:
Q. We don't have any documents back from Mr. Kornegay, do we, sir, refuting this?
A. I've not seen any document. All I can tell you

is what my personal experience is, and it doesn't -- doesn't comport with what Mr. Panzer says about the industry.
MR. CIRESI: I move to strike everything after "I didn't see any document."
THE COURT: Well I'll let it stand.
Q. Can you turn to the next page, "THE STRATEGIC IMPASSE."
"As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme that, quote, the case is not proved, end of quote. As the recent history of U.S. involvement in Vietnam demonstrated, it is impossible to hold the public on a middle course for any length of time. There seems to be no way that mass public opinion can engage in a controversy and/or choose an answer that goes beyond the range of either/or.
"In the cigarette controversy, the public - especially those who are present and potential supporters (e.g. tobacco state congressmen and heavy smokers, close paren, must perceive, understand, and believe in evidence to sustain their opinions that smoking may not be the causal factor." Do you see that, sir?
A. I see that.

Q. Are you familiar with the term "rationalization and denial?"
A. Yes, sir, I'm familiar with those terms.
Q. And you're familiar with those terms in the context of people who smoke?
A. I have heard those terms used, yes, sir.
Q. And what they do is they rationalize or deny what the health hazards may or may not be. That's what that refers to; correct?
A. I think that may be one thing that those -- those phrases -- those words could refer to, yes, sir.
Q. And sir, with regard to the present and potential supporters, you have lobbied congressmen

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who are supporters; haven't you?
A. Yes, sir, we have.
Q. You've sent out materials to heavy smokers; haven't you?
A. I don't think we've ever been able to target heavy smokers. I don't know how we would. We don't have access to that kind of information at the Institute.
Q. Do you have mailing lists for smokers -- of smokers? Excuse me.
A. We have mailing lists, but I don't know that

they're categorized as smoker and non-smoker.
Q. Do you know if the companies themselves ask questions and questionnaires to smokers with regard to the level of use?
A. I'm sorry, I'm not aware of any questionnaire like that that the companies may or may not have.
Q. But you do get this -- these lists of smokers from the tobacco companies; don't you?
A. As I said, I don't know if -- if the lists we have for mailing purposes, or have had in the past, are exclusively smokers or a mix of smokers and non-smokers.
Q. You got the list from the companies; correct?
A. I believe that we have been furnished some information on mailing lists from our member companies.
Q. Now sir, can you go back to page one. This holding strategy had another bullet point, it says "encouraging objective scientific research as the only way to resolve the question of health hazard." Is that right?
A. That's what it says, yes, sir.
Q. Now I suppose you would agree with that statement; wouldn't you?
A. It's been a policy statement of ours for a long

time.
Q. Okay. So that one you agree with, but the first one you don't; is that a fair statement?
A. Well not only disagree, but it's not been my personal experience that that's how the Institute operates.
Q. That wasn't my question.
You agree with the third one, you don't agree with the first one; correct?
A. I'm simply explaining the basis on which I agree or disagree. But yes, that's right.
Q. Thank you.
Now of course the tobacco industry controlled the type of scientific research that they wanted to be perceived as objective; didn't they?
A. I don't agree with that characterization of it, so far as I'm aware of it, no, sir.
Q. Can you turn to Exhibit 10165, please. It would be in the other volume, volume one, sir.

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THE COURT: We'll take a break at this time, counsel.
THE CLERK: Court stands in recess.
(Recess taken.)
THE CLERK: All rise. Court is again in session.

(Jury enters the courtroom.)
THE CLERK: Please be seated.
THE COURT: Members of the jury, as I understand it we're going to be, with agreement of counsel, going to be interrupting the testimony of the last witness and will be interjecting and beginning the testimony of another witness; is that correct?
MR. CIRESI: That's correct, Your Honor. And then we'll pick up with Mr. Merryman tomorrow morning.
THE COURT: Okay. Proceed.
MR. GILL: Your Honor, if it please, plaintiffs call Bennett LeBow.
THE CLERK: Please remain standing and raise your right hand.
(Witness sworn.)
THE CLERK: Please state your name for the record.
THE WITNESS: Bennett LeBow.
THE CLERK: Thank you. Please have a seat.

BENNETT LeBOW
called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. GILL:
Q. Good afternoon, Mr. LeBow.
I think I need to turn my microphone on. Is that better?
A. Yeah.
Q. Mr. LeBow, my name is Dick Gill, I'm with the law firm of Robins, Kaplan, Miller & Ciresi. I'm one of the lawyers that represents the plaintiffs.
We've never met; true?
A. That's correct.
Q. Mr. LeBow, where are you from, sir?
A. I live in Miami, Florida.
Q. And what is your relationship to Liggett Tobacco Company?
A. I'm chairman and CEO of the Brooke Group, which is the hundred percent shareholder of the Liggett Group.
Q. And does that mean that you effectively control the policies and the procedures of Liggett?

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A. That's correct.

Q. And you are the majority shareholder in Brooke Group?
A. That's correct.
Q. It's a publicly traded corporation?
A. That's correct.
Q. But as the majority shareholder you control the policies and procedures of Brooke Group.
A. That's also correct.
Q. Could you share with the ladies and gentlemen of the jury a little personal history. Are you married, sir?
A. Yes, I'm married, two children and five grandchildren. To the same woman all the while.
Q. Well that's good to hear.
Now you understand, do you not, Mr. LeBow, that Liggett has settled with the state of Minnesota in this case?
A. That's correct.
Q. You also understand, I take it, that Liggett has not settled with our other client, Blue Cross Blue Shield.
A. That's correct.
Q. All right. Let's deal a little bit about your -- with your background, if we can do so in a relatively quick fashion.

I believe that you graduated from Drexel University in 1960?
A. Correct.
Q. That's in Philadelphia?
A. Correct.
Q. You earned a degree of bachelor of science degree in electrical engineering?
A. Correct.
Q. After that you went on to Princeton for a while?
A. For a year. Graduate study, yes.
Q. And what did you study at Princeton?
A. Electrical engineering also.
Q. And after you left Princeton you went into the work force for a short while?
A. For a very short while, yes.
Q. And then into the United States Army.
A. Into the Army, correct.
Q. And you were in the Army from 1962 approximately to 1964?
A. As a first lieutenant, yes.
Q. And what did you do in the Army?
A. I was in charge of computer systems in the Pentagon for the Army.
Q. You were in charge of all the systems?
A. A little bit later, a few years later. I stayed

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on as a civilian and I became in charge of all the computer systems throughout the Army, yes.
Q. All right. And when you say you stayed on, I take it you were honorably discharged in 1964?
A. Correct.
Q. And then you went back to work for the United States Army as a civilian?
A. That is correct. Another three years.
Q. Three more years.
A. Three more years, yes.
Q. So that would be between '64 and '67?
A. Correct.
Q. And what exactly did you do during that period of time?
A. Same job. Staying on working in systems, vice chief of staff of the Pentagon, responsible for computer systems throughout the Army.
Q. All right. Now let me see if I can digest what you just told us. You were the assistant to the assistant vice chief of staff for the Army with respect to computers.
A. That's correct.
Q. Computers at the Pentagon or computers throughout the entire United States Army?
A. Computers throughout the entire United States

Army.
Q. And after you left that particular position, I understand that you started your own company in about 1967.
A. Correct.
Q. And then between 1967 and now you have purchased, sold, acquired and operated several different companies; is that true?
A. That's true.
Q. Now one of the companies that you acquired was Liggett.
A. That's correct.
Q. And that occurred back in 1986?
A. Correct.
Q. Now had you had some long-held desire to operate a tobacco company?
A. No. It was merely a financial opportunity that came along.
Q. Okay. You saw the purpose of Liggett strictly as a business opportunity?
A. That's right.
Q. In the simplest terms, was -- was the price that was asked basically a price that you felt was attractive as a business investment?
A. That's absolutely correct.

Q. And you purchased with the hope that you would ultimately earn some profit from your ownership of Liggett.
A. Correct. I myself and the shareholders.
Q. All right. Now just tell us a little bit about

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Liggett. What brands of cigarettes was Liggett selling in 1986 when your group purchased Liggett?
A. Four main brands are L&M, of course, Liggett & Myers, L&M, Lark, Eve and Chesterfield.
Q. And Chesterfield, of course, is a cigarette brand that has a long history.
A. It's been around many, many years, yes.
Q. Now when you purchased Liggett in 1986, Mr. LeBow, were you a smoker?
A. No.
Q. Had you ever been a smoker?
A. Thirty years ago I was a smoker.
Q. So sometime back in the -- in the late '60s you were a smoker?
A. That's correct.
Q. And why did you quit smoking?
A. I just decided to quit one day.
Q. And did you decide to quit sometime after you read about the 1964 Surgeon General's report?
A. Yes. Back in the late '60s there was a lot of

information about health hazards, and I just decided to quit.
Q. And when you reviewed the information that was available about the Surgeon General's report, I take it that you accepted the type of proof that that report found conclusive with respect to cigarette smoking and lung cancer.
A. I don't think at that time I made any firm decision on that. I just decided to quit. Just didn't like it and wanted to quit.
Q. Did you understand that the first Surgeon General's report was based primarily on epidemiological studies?
A. I really didn't study it thoroughly even to understand that.
Q. But whatever it was, the information that came out of that report was sufficient to convince you that it would be a good idea to stop smoking.
A. That's correct.
Q. And as I understand it, it was a little bit hard to quit.
A. It took me about six weeks, six to eight weeks to really get over the craving, so to speak.
Q. And I take it you regard yourself as a strong-willed individual?

A. Yes.
Q. So you hung with it through the six or eight weeks that you continued to have cravings and eventually you got them under control.
A. That's correct.
Q. You haven't smoked since then?
A. Have not smoked since.
Q. Now when you purchased Liggett in 1986, did you give any thought at that time to whether cigarette smoking was addictive?

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A. I -- I had seen a few lawsuits around, there was some litigation going on there, some individual litigation at the time, but I was told by all the lawyers I shouldn't be concerned about it because there were health warnings on the -- on the cigarette packages and everyone was informed, so I didn't focus on it at all.
Q. So basically at the time you purchased the cigarette company, you got some information from company lawyers and you didn't feel at that time that addiction was an issue that required your focus.
A. At that time addiction -- addiction was not an issue at all. I mean that --
Q. Not an issue at all.
A. Not an issue at all. There was just some

litigation about, you know, not being warned about the health hazards, but I was told by all the attorneys involved that, you know, there were warning labels on the package and everyone was fully informed about it, I shouldn't be concerned about it from a litigation point of view.
Q. All right. Now let me just suggest as we go forward, Mr. LeBow, that if you can try to wait until I finish my question, I'll try to wait until you finish your answer, and then it will be a lot easier on the court reporter to get this all done. Is that agreeable?
A. Yeah. Fine. Thank you.
Q. And if any of my questions to you aren't well understood, please let me know about it and I'll try to rephrase the question so that you're sure and I'm sure that we're both communicating; is that agreeable?
A. Fine.
Q. All right. Now I take it, then, that based upon this information, that there were a few lawsuits around, but they weren't of any particular significance, at least as far as your investment in Liggett was concerned, that you did not focus your attention on the smoking-and-health issue as of the

time that you acquired Liggett in 1986.
A. That's correct.
Q. You didn't make any type of a detailed, thorough analysis or evaluation of the smoking-and-health issue; true?
A. That's true.
Q. You didn't ask anybody else to make such an evaluation or analysis for you.
A. That's correct.
Q. Okay. Now as -- as time went along, did you find out that Liggett was taking a certain position with respect to issues involving smoking-and-health lawsuits?
A. Liggett is the smallest, you know, tobacco company in the country, so it has less than two

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percent of the market, and I just saw Liggett following everyone else, just doing pretty much what all the other tobacco companies were doing, and that was what I -- I noticed for the, you know, next six, seven years.
Q. Now I take it that what you were doing over those six or seven years was basically letting Liggett management operate the company.
A. Correct.
Q. You were getting some reports from time to time,

but I take it you were focusing mostly on the financial details.
A. That's correct.
Q. But I take it you did understand that these lawsuits that got mentioned to you at the beginning were still proceeding.
A. There were a few. Some -- some were dismissed, some went on. It was still just a very few lawsuits during this period of time.
Q. But I take it you understood that Liggett's position with respect to those lawsuits was, number one, it was not proven that smoking caused lung cancer or any other disease; true?
A. Correct.
Q. Liggett also took the position in those lawsuits that smoking was not addictive, nicotine was not addictive; true?
A. That's the position they took, but I didn't really focus on them very -- very detailed.
Q. Right. And I'm --
At this point in time, Mr. LeBow, I'm not asking whether you were focusing your attention, but merely whether you were aware, at least generally, that that was the position that your company was taking.
A. My --

Correct, my company was taking the same position as the industry during this period of time.
Q. All right. And another position that your company was taking in these lawsuits was that smoking is a matter of choice; true?
A. That's true.
Q. And you mentioned that this was -- that these were positions that not only Liggett was taking, but the industry itself was taking.
A. The entire industry was taking the same position, yes.
Q. And by "the industry," I take it you're referring to companies such as Philip Morris?
A. Correct.
Q. RJR?
A. Yes.
Q. Brown & Williamson?
A. Yes.
Q. Lorillard?
A. Yes.

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Q. American Tobacco?
A. Yes.
Q. They were all competitors of yours in the late '60s; were they not?
A. That's correct.

Q. All right. And so you understood that Liggett, as one of the smallest companies, was simply echoing a position that the larger members of the industry were taking with respect to the issue of smoking and health.
A. That's absolutely correct.
Q. And that industry position was premised on the position or the policy that it was not proven whether or not smoking caused disease; true?
A. That's what I was told.
Q. That it was not proven that smoking was addictive.
A. True.
Q. And that in any case, smoking was simply a matter of choice.
A. Correct. And people were warned with the health warnings.
Q. Now during this period of time did you find out that Liggett was a member of The Tobacco Institute?
A. I heard that we were, yes.
Q. And did you understand that The Tobacco Institute was a trade association that promoted the views of the industry?
A. I knew very little about The Tobacco Institute. I knew we were a member, but I knew very little bit

about it.
Q. As far as you understood it at the time, were you a cooperative member of The Tobacco Institute along with the other tobacco companies?
A. I really don't know. I know we were a member, and I constantly questioned why we were bothering to be a member, being such a small player in the industry, why we bothered in paying our dues even.
Q. And were your dues to the tobacco industry based on some pro rata portion of tobacco sales?
A. Yes.
Q. Liggett versus the rest of the industry?
A. There was some form. Exactly what it is, I don't know.
Q. Was it your understanding at this point in time that Liggett was part of some type of a united front on behalf of the tobacco industry --
MR. WEBER: Objection.
Q. -- with respect to those matters that we just discussed?
MR. WEBER: Your Honor, can I object? Now we're getting past introductory matters and it's still very, very leading. And this is counsel for the state. The witness was called on behalf of both plaintiffs. I think we ought to proceed without

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leading questions.
THE COURT: I think he's entitled to ask leading questions.
Q. Mr. -- Mr. LeBow, just so we're very clear about this, you understand that I'm here representing Blue Cross and Blue Shield --
A. I understand that.
Q. -- of Minnesota?
A. Yes.
Q. And that Blue Cross and Blue Shield have made substantial claims against your company in this lawsuit?
A. I understand that.
Q. Now were there a couple of occasions between 1986, when you acquired Liggett, and 1995, when in some way or another you became involved or had some exposure to the smoking-and-health issue at Liggett?
A. Yes.
Q. And those two occasions involved, first of all, that you were deposed in a lawsuit in Florida in 1993; correct?
A. Correct.
Q. And the second occasion involved being in the office at Liggett at the time that Mr. Horrigan was preparing to give testimony before Congress in 1994

with respect to whether smoking was addictive or not.
A. Correct.
Q. In 1994 you had hired Mr. Horrigan as the chief executive officer of Liggett; true?
A. True.
Q. And you knew of Mr. Horrigan's background and experience in the cigarette industry at the time you hired him; correct?
A. That's correct.
Q. And Mr. Horrigan had come from RJR.
A. That's correct. He'd been president there.
Q. He'd been president of that company, one of the biggest companies in the industry.
A. That's correct.
Q. And you were in the office going over some financial reports and became aware that Mr. Horrigan was meeting with lawyers and reviewing documents in connection with some congressional testimony that he was going to be giving in a short time.
A. Right. I was -- I went there to meet with him, go over some financial projections, and I was told that he was tied up with the lawyers all day because there was some testimony, as you say, the next day in Congress.
Q. And you got some understanding that one of the

issues that was likely to come up in Congress was the

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question of whether or not smoking was addictive.
A. I really didn't talk to him at all about it. He was just being briefed by the lawyers completely through the whole day, and I don't think I saw him more than 20 minutes.
Q. So you didn't get a --
You didn't take the time to try to learn just exactly what type of testimony Mr. Horrigan was going to offer in Congress.
A. That's correct.
Q. I take it you ultimately found out Mr. Horrigan testified in Congress that in his opinion smoking was not addictive.
A. That's correct. I saw -- I watched it the next day on TV.
Q. Okay. Now you hadn't given much thought to the subject of addiction, had you, at that point in time?
A. That's correct.
Q. And based upon his testimony, you didn't re-evaluate your own position on addiction; did you?
A. I thought it a little strange, but I didn't really focus on it, true, --
Q. All right.
A. -- for any period of time.

Q. And just so we're clear about this, you didn't call Mr. Horrigan on the carpet and ask him why in the world he had testified that smoking was not addictive; did you?
A. No, I did not.
Q. You didn't reprimand him in any fashion with respect to his testimony; true?
A. True.
Q. Now, the other incident that involved smoking and health prior to 1995 was this deposition in Florida in '93; correct?
A. Correct.
Q. You were deposed by an attorney by the name of Rosenblatt?
A. Correct.
Q. And the case was Broin?
A. Correct.
Q. That was the case that involved the airline hostesses?
A. Yes.
Q. Second-hand smoke?
A. Correct.
Q. Now in preparation to be deposed in that case, I take it you met with an attorney.
A. Correct.

Q. And did you meet with the attorneys who were typically representing Liggett in smoking lawsuits?
A. Yes. For many years, same attorneys.
Q. Same -- same law firm, same attorneys?
A. Same law firm, same attorneys.
Q. So when --

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I take it, first of all, you were -- either your office was contacted by this gentleman or in some manner you found out that these lawyers had been representing Liggett for a long time.
A. Correct.
Q. You felt they were experienced and knowledgeable with regard to the issues that would be involved in that case.
A. They'd been doing Liggett's tobacco litigation for many, many years.
Q. And naturally, they wanted to meet with you before you were deposed in order to brief you with respect to the types of questions that you might face; true?
A. True.
Q. And one of the issues that your lawyer told you might well arise during the deposition was the matter of addiction; true?
A. True.

Q. And I believe that at that time you expressed to him that you had been able to quit smoking yourself, and although you hadn't really looked into it, that you could testify that in your personal view nicotine and smoking were not addictive.
A. True.
Q. And is that how you testified?
A. That's how I testified. Yes, that's how I testified. I thought -- it was my personal opinion. I had stopped smoking, and I knew a lot of other people who stopped smoking.
Q. You didn't have a wealth of additional information on the subject other than your own personal experience.
A. Correct.
Q. And even though it had taken you, a strong-willed person, six to eight weeks to quit, you still felt at that point in time that perhaps it's not addictive; true?
A. That's -- that's true.
Q. All right. Now, there was another issue that you learned during that pre-deposition conference with your attorney that might come up; true?
A. True.
Q. That was the issue of causation.

A. Correct.
Q. The matter of whether smoking caused lung cancer, heart disease and emphysema.
A. Correct.
Q. Did your attorney explain to you what Liggett's position and the industry's position had been with regard to that subject?
A. I don't recall exactly, but I think the -- the explanation was something to the effect that nothing's been proven so far, something to that -- of that nature.

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Q. So he told you that up to that point in time nothing had been proven to establish that smoking caused lung cancer and these other diseases.
A. Something to that effect. Again, I don't remember the exact words.
Q. Did he tell you that nobody really knew?
A. Something --
Yes, something of that nature. That, you know, it's just never been proven. There's warning labels and who knows? So I think my answer to that question was, you know, I just don't have any information on that.
Q. So when Mr. Rosenblatt did ask you whether you believed that smoking caused lung cancer, heart

disease and emphysema, you told him, "I don't know."
A. "I'm not a scientist, I don't know for sure."
Q. Were you relying upon the information that your attorneys supplied you in giving that answer under oath at that time in that trial?
A. To a major degree, yes.
Q. Okay. And when you heard this advice from your attorney, did you recognize that that was consistent with the long-held position of the tobacco industry on that subject?
A. Absolutely.
Q. And you understood that, in fact, it had been Liggett's long-held position on that subject in defending lawsuits brought by smokers; true?
A. I believe so, yeah. I didn't study them that well, but I believe that's true.
Q. Now at the time of the deposition, I believe you even asserted, in response to Mr. Rosenblatt's questions, that you were a businessman selling a legal product, you didn't really care whether smoking caused disease, and that you were entitled to make as much profit in selling a legal product as you could.
A. I don't know if I said I don't care about the cause of disease, I just said -- I think I said I didn't know what had caused the disease.

Q. Do you recall testifying at that time that you viewed cigarettes as a legal product?
A. Yes.
Q. Was that information that the attorney had equipped you with before you took the stand?
A. I don't recall.
Q. But you made the point of expressing the view in the deposition that since it was a legal product, you felt that Liggett was entitled to earn whatever profits it could from the sale of that product.
A. That's correct.
Q. Now if you would be kind enough to turn in the book of exhibits that's before you to tab one. This is an Exhibit 20987, and it was just admitted into evidence a little bit ago at the time that Mr. Merryman was on the stand. Do you recall that?

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A. Yes, I do.
Q. And I think there's already been a reference to it, Mr. LeBow, but just so everybody is clear, you have been present in the courtroom all day today; have you not?
A. Yes, I have.
Q. You've been watching the proceedings and paying attention to the testimony?
A. Yes, I have.

Q. You'll recall that this is a May 1, 1972 memorandum from Mr. Panzer to Mr. Kornegay; correct?
A. Correct.
Q. And as we just heard, Mr. Panzer was the vice-president with the organization, Mr. Kornegay was the president of the organization; correct?
A. Correct.
Q. Let me direct your attention to the upper right-hand corner of that first page. Do you see that there is a stamp there that says "CONFIDENTIAL?"
A. Yes.
Q. So apparently Mr. Panzer viewed the information that he was providing to Mr. Kornegay as confidential.
A. Apparently.
MR. WEBER: Objection, Your Honor, there's no foundation with this witness.
THE COURT: Sustained.
BY MR. GILL:
Q. Now in the second paragraph on that page it states that "For nearly twenty years, this industry has employed a single strategy to defend itself on three major fronts -- litigation, politics, and public opinion." Did I read that correctly?
A. Yes, you did.

Q. And the 20 years, of course, goes back to 1952.
A. Correct.
Q. And as far as you understand it today, had that single strategy also been employed by Liggett during the 20 years prior to 1972?
A. Yes.
MR. WEBER: Objection, Your Honor, there's no foundation. He wasn't affiliated with the company then.
THE COURT: No, I think you're in a position to answer that.
A. The answer is yes.
Q. Now the next paragraph goes on, "While the strategy was brilliantly conceived and executed over the years helping us to win important battles, it is only fair to say that it is not - nor was it intended to be - a vehicle for victory. On the contrary, it has always been a strategy consisting of," and the first bullet point is, "creating doubt about the health charge without actually denying it." Did I read that correctly?

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A. Yes, you did.
Q. Is that what you did in the Broin case when you testified that you didn't know whether smoking caused lung cancer and those other diseases?

A. I was not attempting to do that, I was just attempting to say what I felt.
Q. And what you felt was based upon what your attorney had told you.
A. Partially, yes.
Q. And your attorney had told you that nobody really knew.
A. Correct.
Q. And if nobody really knew, there would be doubt; would there not?
A. Correct.
Q. And so even though you weren't aware of this particular memorandum at the time that you testified in the Broin case in 1993, essentially you were espousing the same position with regard to the causation issue as Mr. Panzer has referred to in this document; true?
MR. WEBER: Objection, Your Honor, it's argumentative.
THE COURT: You may answer that.
A. I think it was just the party line. I was espousing the so-called party line or industry line that everyone else was saying.
Q. And you understood that's what you were doing at the time you testified in Broin -- in Broin.

A. To a major degree, yes.
Q. Now, as somebody who has owned a cigarette company for approximately eleven or 12 years and as a former member of The Tobacco Institute, was it your impression that The Tobacco Institute, on behalf of the industry, espoused an attempt to create doubt about the health issue -- issue without actually denying it? Is that your understanding of what the -- one of the things The Tobacco Institute was attempting to accomplish?
A. After seeing all these documents and everything else I know now, yes.
Q. You heard Mr. Merryman, the representative of The Tobacco Institute, tell the jury that he didn't believe that it was the position of The Tobacco Institute that it was attempting to create doubt without actually denying the health charges. Do you recall that testimony?
A. Yes, I do.
Q. Is that testimony by Mr. Merryman consistent or is it inconsistent with your understanding of what The Tobacco Institute was trying to do with regard to the causation issue?
MR. WEBER: Objection, Your Honor. You've not allowed witnesses to comment on the testimony of

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other witnesses.
THE COURT: Okay. I believe he can -- he can comment on his position as against that witness. But I think you should rephrase that, counsel.
MR. GILL: Certainly, Your Honor.
Q. The position that The Tobacco Institute and the tobacco industry have attempted to create doubt about the health issue without actually denying it, is that position consistent with your understanding of what the industry and the Institute were attempting to do during the time that you've owned Liggett?
A. From what I know now, yes.
Q. Would you look at the next page of Exhibit 20987, please. Do you see the paragraph that starts out under the heading "STRATEGIC IMPASSE?"
A. Yes.
Q. And the first sentence reads, "As an industry, therefore, we are committed to an ill-defined middle ground which is articulated by variations on the theme, quote, the case is not proved, unquote."
That's the position, essentially, that you took in Broin; correct?
A. Yes.
Q. And again, at the time that you took it, you understood that you were simply mouthing the standard

industry line with regard to that issue; true?
A. That's true.
Q. Now if you'd turn to tab five of the notebook, please. Do you see that tab five consists of a document called "The Smoking Controversy: A Perspective," and that it is a statement by The Tobacco Institute in December of 1978?
A. Yes.
Q. Okay. And you're familiar with the fact that The Tobacco Institute would periodically issue statements on the smoking-and-health issue on behalf of the industry and all of its members?
A. I wasn't, you know, knowledgeable exactly what The Tobacco Institute did during this time period, but I am now --
Q. All right.
A. -- from seeing these documents and sitting here today.
Q. And you know now that that's one of the things that the tobacco industry had been doing for years and years; true?
A. Yes. True.
MR. GILL: Your Honor, offer Exhibit 14447.
MR. WEBER: I'd object through this witness, Your Honor. There's no foundation that he's

seen this other than in the context of getting it from his attorneys for litigation.

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THE COURT: You'll have to lay more foundation, counsel.
Q. Is this one of the documents that you've reviewed in preparation for your testimony today, sir?
A. No, I did not.
Q. You weren't aware that this was designated as an exhibit that would be used?
A. No.
Q. Are you aware that one of the positions that The Tobacco Institute and the industry have taken is that the proof of causation is supposedly only based on statistical associations?
A. That's one of the things they've said, yes.
Q. And has the industry attempted to push the point of view that causation established by statistical associations would be a myth?
A. Would you repeat that?
Q. As far as you understand it, sir, has the industry attempted to take the position that to establish causation by statistical associations alone would be a myth?
A. I don't know if they have gone that far to say a

myth, but, you know, that would be wrong if they said that.
Q. And certainly you believe that there is strong proof of causation based upon epidemiological studies that have shown a much higher incidence of lung cancer and other diseases on the part of smokers versus non-smokers; true?
A. Based upon -- based upon the documents I've -- I've seen and been told about the past year, the answer to that question is yes.
Q. And if the industry were taking the position publicly that an attempt to use statistical associations to establish causation would be a myth, you would disagree with that position; would you not, sir?
A. Strongly.
Q. Are you aware of the fact that the industry often has commented in the past on the pronouncements of the Surgeon General with respect to the various reports that have been issued commencing in 1964 and continuing as recently as a few years ago?
A. I believe they've said that nothing's been proven, just like they're saying now.
Q. So the industry has even taking the public position that the Surgeon General reports are not

reliable with regard to the issue of causation; true?
A. That's true.
Q. Let me ask you to turn to tab six. Do you have that now, sir?
A. Yes, I do.
Q. Do you see that tab six is a document that has been marked for purposes of the trial as Trial

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Exhibit 10483?
A. Yes.
Q. And it is a document that has been furnished from the files of BATCo Ltd. in the Minnesota tobacco litigation. Do you see that at the bottom of the first page?
A. Yes.
Q. Do you see that the author of the document is P. N. Lee, L-e-e?
A. Yes.
Q. And that it is dated February 9, 1979?
A. Or September 2nd. I don't know.
Q. Yes, but in Europe they often put the --
A. Okay. Fine.
A. They reverse the --
A. Yeah.
Q. -- the day of the month. All right.
So it's either September of '79 or February of

'79; correct?
A. Correct.
Q. All right. And the title of the document is "1979 Surgeon General's Report;" correct?
A. Correct.
Q. Now at the time that you were testifying in the Broin case and meeting with your attorney to prepare your testimony, did the attorney ever share with you on the subject of causation any information that consultants hired by the industry to assess epidemiology and statistics had come to the view that the industry's attempts to denigrate Surgeon General's reports were invalid?
A. I don't think we ever -- we never went into that type of detail, no.
Q. Okay. If you had known at the time of your testimony in Broin that consultants hired by the industry had quarreled with the industry's attempts to denigrate the Surgeon General's reports on the subject of causation, might that have given you some pause before you testified under oath that you didn't really know with regard to the causation issue?
A. Absolutely.
MR. WEBER: Objection, Your Honor, it's speculation.

THE COURT: No, he may answer that.
A. Absolutely would have given me pause to think about it.
MR. GILL: Your Honor, we'll offer Exhibit 10483 as an admission by a party opponent, and specifically offered, Your Honor, under Section 802 -- excuse me, 801(d)(2) in that we believe that defendants have conceded that Mr. Lee was a consultant to BATCo at the time of this report, and that this is a report by a party's agent within the scope of the agency. And I believe, Your Honor, this is a document that the court itself cited in a prior

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order issued by the court.
MR. WEBER: I'd have the same objection here, Your Honor, that with this witness, it's not a document he's ever seen before other than -- apart from this litigation, so I don't think it ought to be admitted through him.
THE COURT: The court will receive 10483.
MR. GILL: Thank you, Your Honor.
BY MR. GILL:
Q. All right. Now we're looking at the first page of Exhibit 10483. Do you see, as we've already discussed, the author is P. N. Lee, it's dated in '79, it's with respect to the '79 Surgeon General's

report. True?
A. True.
Q. All right. Now in the very first sentence Mr. Lee says, "We at Glen House have recently received a copy of the 1979 Surgeon General's report." Do you see that?
A. Yes.
Q. All right. Now if you'd be kind enough to turn to the second page, see there's a paragraph there that says "General Impression?"
A. Yes.
Q. Mr. Lee writes, "There is no doubt that this is an impressive document. The clarity -- The clarity of presentation and extent of coverage will make it become the Number One basic reference document for smoking and health researchers the world over." Do you see that language, sir?
A. Yes, I do.
Q. Were you aware of the fact at any point in time between 1986 and 1995 that industry consultants held views like this with respect to the Surgeon General's reports?
A. No, I was not aware of it.
Q. As far as you understood it, the industry and its consultants were publicly expressing contrary

points of view; true?
A. That's what I was told.
Q. Now if you would turn to page 17 of this document, Mr. LeBow. Under item number five there, the "Role of 'The Continuing Controversy,'" and the author points out that "Many of the points raised by The Tobacco Institute in TA73 "The Continuing Controversy" were preempted by the Report itself." Do you see that?
A. Yes.
Q. All right. Now assuming that The Tobacco Institute issued a document that apparently had the code number TA73 and was called "The Continuing Controversy," this would appear to be a reference by the B.A.T consultants to that particular document; would it not?
A. Yes.

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Q. And to the extent that the continuing controversy referenced at all the 1979 Surgeon General's report, in the author's opinion the report had already preempted the points that were being raised by The Tobacco Institute document; true?
A. You got to repeat that one, counselor.
Q. As far as the author was concerned, the Surgeon General's report had preempted whatever positions

were being asserted by The Tobacco Institute in the document called "The Continuing Controversy?"
A. That's what it says, yeah.
Q. And "preempt" means to anticipate and refute in this context; does it not?
A. Correct.
Q. Down near the bottom of that page under point iii it says, "TA73 does not appear to understand what causation is." Do you see that language?
A. Yes, I do.
Q. And then if you would go to the next page under -- on the following page, item Roman numeral iv -- we're on page 18 of the document now -- the author states, "To prove causation it is not necessary theoretically to know the etiology of the disease in question." True?
A. That's what it says. I know nothing about it though.
Q. Well you do know, sir, that "etiology" refers to the origin of disease; do you not?
A. I know it now.
Q. And were you aware at any time prior to the last year or so that consultants retained by the industry were advising members of the industry that it was not necessary to know the etiology of disease in order to

prove causation?
A. I was not aware of that.
Q. And just above this statement there's a paragraph that starts out, "Discussion of the role of other factors...." Do you see that?
A. Yes.
Q. The author states, "Discussion of the role of other factors can be particularly misleading when the discussion is made of relative magnitude of effects. For example, heavy smokers are observed to have 20 or more times the lung cancer rates of non-smokers."
Now that's an epidemiological finding that the author is referring to; correct?
A. Correct.
Q. Then the author goes on, "Sure, this does not prove smoking causes lung cancer, but what it does mean, and TA73 never considers this, is that for any other factor to explain this association, it must have at least as strong an association with lung cancer as the observed association for smoking (and be highly correlated with the smoking habit)." Did I read that correctly, sir?

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A. Yes, you did.
Q. So what the author is stating here is that for this association to be explained by anything other

than smoking, someone would have to be able to identify some other factor that has at least as strong a correlation as the smoking effect; true?
A. True.
Q. Had you ever heard that from either a Liggett attorney or any spokesperson on behalf of the industry?
A. Not up till about 1995 or '96, no.
Q. Does that statement make sense to you, sir?
A. Makes logical sense to me, yes.
Q. Are you aware of any other factor that the industry has ever identified that would have the same type of correlation to lung disease, heart disease and emphysema as smoking does?
A. No, I do not.
MR. WEBER: Objection, Your Honor, there's no foundation. He's testified he wasn't focused on those issues.
THE COURT: Well he can testify if he's aware of that.
Excuse me. Did you answer?
THE WITNESS: "No." The answer was "no," Your Honor.
THE COURT: Thank you.
Q. Now sometime in 1995 you did begin to focus on

the smoking-and-health issue; true?
A. True.
Q. One of the first things that happened that year was that you began to seek reports from Liggett's general counsel with respect to what was going on relative to the smoking cases.
A. True.
Q. And the general counsel at that time was a gentleman by the name of Joseph Murray?
A. Correct.
Q. He had been the general counsel of Liggett for many, many years prior to 1995, 20 or so?
A. Correct.
Q. Okay. And what you asked Mr. Murray to do was to send you a periodic report that would simply outline the status of the various lawsuits that Liggett was defending.
A. Correct.
Q. True?
A. True.
Q. Liggett was often defending these lawsuits along with other members of The Tobacco Institute; true?
A. True.
Q. And in these particular reports, Mr. Murray simply provided you with some basic, general

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information about these cases; correct?
A. Correct.
Q. They didn't tell you a great deal, but at least it was more than you previously knew; true?
A. Yeah, that's true.
Q. Then another thing happened in 1995 that caused you to focus on the smoking-and-health issue; true?
A. True.
Q. What was that?
A. In about September -- or August/September of 1995 these lawyers, this group of lawyers who had been defending Liggett for about 20 or 30 years came to me and said they want to go to another law firm. At the time I suggested they go to a law firm that I was using that was experts in product liability so I could have closer relationships and focus better on the issues. They came back to me the next day and said if I let them go to another law firm, another large New York City law firm, Philip Morris would pay all of my legal fees. And that really got me thinking what's going on here? Why is Philip Morris going to pay my legal fees all of a sudden?
Q. All right.
A. Of course -- I'm sorry.
Q. I'm sorry. Have you finished your answer, sir?

A. No, go ahead.
Q. Let's sort this out. You received some type of contact from attorneys outside the company who had been representing Liggett for years in defending these smoking lawsuits; true?
A. That's true.
Q. Okay. And these lawyers had originally been with a New York firm by the name of Webster & Sheffield; correct?
A. Correct. At the time they were at a different law firm.
Q. I'm sorry, sir?
A. They were at Mudge, Rose at that time.
Q. We'll get to that.
A. Okay.
Q. But initially Liggett's law firm going back to the mid '50s in defending these cases had been Webster & Sheffield; correct?
A. Correct. Correct.
Q. And then these particular attorneys, for one reason or another, that were working on the Liggett cases, they left Webster & Sheffield and they went to the Mudge, Rose law firm in New York; true?
A. True.
Q. And is it your understanding that both Webster,

Sheffield and Mudge, Rose were both very large, prestigious New York law firms?
A. That's correct.

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Q. And then while at Mudge, Rose, the spokesperson for these lawyers got to you the message that he wanted your approval for he and his partners and associates to pack up, leave Mudge, Rose, and go to still another law firm.
A. That's correct.
Q. And the other law firm was Lathan & Watkins.
A. That's correct.
Q. And that's a large Los Angeles law firm, but apparently they have an office in New York as well?
A. That's correct.
Q. All right. And at the point in time when this occurred, you suggested to these attorneys that you would be more comfortable if they joined a law firm that you had some relationship with.
A. That's correct.
Q. And that was the Kasowitz law firm in New York.
A. That's correct.
Q. You felt that was a reasonable request to make, being that they were working full time on Liggett matters?
A. That's correct. I didn't understand their

problem.
Q. And you were paying the bills.
A. I was paying the billings.
Q. And so you were waiting to hear back from them.
A. Correct.
Q. And then either the lawyers themselves or Mr. Murray came to you and told you that if you would agree to let them go to Liggett & Myers -- if you would agree to let them go to Lathan & Watkins, then Philip Morris, one of your competitors, would pay all of Liggett's legal fees. Is that what happened?
A. That's exactly what happened.
Q. Did anything ever happen like that before in your business experience?
A. Not in my professional experience, no.
Q. With all of the companies that you have owned over the years, had you ever had a situation where a competitor told you they would pay your legal bills?
A. Never.
Q. Did this cause you to have some concern with respect to the loyalty of the lawyers who had been representing Liggett?
A. Absolutely did.
Q. Now these legal fees that were being discussed, they weren't small change; were they?

A. That's correct, they were not.
Q. They were running in the area of eight to 10 million dollars a year to defend Liggett.
A. That's correct.
Q. And at this point in time, I presume that that was an expense that you would certainly like to pass off if you could.
A. That's correct.

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Q. Okay. But you had these misgivings about the loyalty of these attorneys after this proposal was made to you.
A. Serious misgivings.
Q. What did you do?
A. I -- I let them go to Lathan & Watkins to see what happened for a while. I agreed to it on a temporary basis. And then another strange thing happened a few months later.
Q. What was that?
A. I was involved with other shareholders in an attempt to get RJR Nabisco to split into the food business on tobacco business, and RJR --
Q. How was it, sir, that you were involved in that type of event?
A. It was one of my financial, you know, ventures, so to speak. I was a shareholder, major shareholder

in RJR, and other shareholders came to me and said we think RJR should split up its food and tobacco business, and from an economic point of view it made sense. I then started a -- what's called a consent solicitation of the other shareholders, getting the other shareholders to -- to agree to this, and during this consent solicitation effort, which was a couple months after this Philip Morris incident, RJR came out publicly and said, "We can't do that."
So I said publicly, "Why not?
"Well there's too much tobacco litigation." They can't do it because of the tobacco litigation.
I said, "Wait a minute. What tobacco litigation? I've been told for 40 years we've never paid a penny, we have no liability. This doesn't make any sense." So --
And by the way, we won the consent solicitation, the shareholders all agreed with this, but given those two events, the event of Philip Morris wanting to pay my legal fees and RJR Nabisco telling the world they can't, you know, separate their companies, do a restructuring because of potential tobacco litigation, I really started to, so to speak, smell a rat.
Q. All right. So you were a major shareholder of

RJR Nabisco in 1995.
A. Along with other people, yes.
Q. And you and your group controlled about three or four percent of the company?
A. I think, with the rest of my group, it was more than that, I think closer to six or seven percent.
Q. And you -- you and your group comprised the second-largest shareholder of RJR at that time?
A. That's correct.
Q. Are you still a shareholder of RJR today?
A. Yes, we are.
Q. Okay. Do you hold the same type of interest?
A. No. Much smaller.

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Q. Much smaller?
A. Yes.
Q. You were attempting to convince the board of directors of RJR back in 1995 that it would be a prudent business move to spin off the Nabisco part of the company as a separate legal entity; correct?
A. Correct.
Q. You wanted Nabisco to be a separate publicly traded company.
A. Correct.
Q. And you thought that was an appropriate thing to do because, I take it, you assumed that the combined

value of RJR, the tobacco company -- or R. J. Reynolds Tobacco Company and the Nabisco food company combined would exceed the cumulative value of the existing legal entity, which was a single unit.
A. That's correct. And 53 percent of the shareholders agreed with me.
Q. And when you brought that suggestion to the opinion -- or to the attention of the board of directors, they told you that it couldn't be done because of pending cigarette litigation.
A. Correct.
Q. You couldn't get RJR out -- excuse me.
You couldn't get Nabisco out of RJR because there would be an effort to block such an attempt to spin off part of the assets of the company.
A. That's correct.
Q. That those assets might be needed to respond to lawsuits.
A. That's correct.
Q. And you said, "How can this be? I've been told that we never lose a lawsuit. We have no liability. Nothing has been proven. Cigarettes aren't addicting. It's choice."
MR. WEBER: Objection, Your Honor, it's a final argument.

THE COURT: Do you have a question, counsel?
Q. You were told that the lawsuits prevented this spinoff from occurring.
A. That's correct.
Q. And you reacted with surprise?
A. Very much so.
Q. Because you had not regarded the lawsuits, at least at Liggett, as an economic threat to the viability of your company; true?
A. That's what I'd been told for the past six, seven, eight years.
Q. All right. Given these two situations, then, that occurred in 1995, what did you do? You got your lawyers at Lathan & Watkins now representing Liggett in tobacco lawsuits, Philip Morris is paying for them, and there are more lawsuits now in '95 than ever before; true?

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A. True.
Q. And among the lawsuits that had been filed and are pending in '95, there are some Attorney General lawsuits; are there not?
A. That's correct.
Q. One of which was started by the state of Minnesota.

A. Correct.
Q. And there was a class action lawsuit that was pending down in Louisiana on behalf of all individual smokers. The name of that case was Castano; correct?
A. Correct.
Q. What, then, did you do?
A. I in secret hired this other law firm, the Kasowitz law firm, and instructed them to contact the plaintiffs, in this case the attorneys general and the class action lawyers, and let's have a meeting and talk about what's going on. Because the quickest way for me to find out what was happening was to talk to the other side.
Q. You wanted to know how much real potential liability Liggett might be facing in these lawsuits; true?
A. True. I thought I wasn't getting the truth from my current lawyers. I wanted to find out more. So I had -- you know, the Kasowitz firm in secret, have secret meetings with the other side and hear the other side of the story.
Q. For nine years you had been ignoring smoking-and-health issues because you didn't feel that they had any materiality to the bottom line; true?

A. True. And I was told there was no problem.
Q. And now you were getting to become concerned that there could be a great deal of significance to smoking-and-health lawsuits with respect to the bottom line of your company.
A. I felt there was obviously some things I didn't know and wasn't being told. I wanted to get to the bottom of it quick.
Q. Why didn't you simply go to Lathan & Watkins, talk to your lawyers, and find out whether there was any credence to the claims that were being brought against Liggett and the other members of the industry?
A. I wasn't sure whose lawyers they were. Don't forget, they were being paid by Philip Morris.
Q. Well how about Mr. Murray and his staff, why didn't you call Mr. Murray into your office and say, "I'm beginning to get concerned about this. What is the true situation? How much of a threat are these lawsuits?"
A. I just had a feeling I had to talk to somebody new, lawyers who had not been so deeply involved in this for so many years.

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Q. Had Mr. Murray consistently told you that the case against smoking had not been proven?

A. He consistently told me the same industry line, so to speak.
Q. The whole matter of choice and that cigarettes are not addicting.
A. Absolutely.
Q. So I take it you're telling us that you weren't completely sure that Mr. Murray would give you a candid view of the situation.
A. I think all the lawyers involved are so involved in this over so many years, they just had no other view.
Q. So you hired a new law firm secretly.
A. Right.
Q. The Kasowitz law firm.
A. That's correct.
Q. And since you couldn't go to your lawyers on the outside or the inside, you instructed Kasowitz to go to the plaintiffs' lawyers.
A. That's correct.
Q. And you asked Kasowitz to sit down with the plaintiffs' lawyers and try to get a handle on why it was that the plaintiffs' lawyers had brought those lawsuits and were pushing those lawsuits as vigorously as they were.
A. That's correct.

Q. And did anybody from Kasowitz know anybody that was representing any of the plaintiffs in Castano or any of the attorneys general actions?
A. Yeah. Mr. Kasowitz had just settled another lawsuit unrelated to tobacco with one of the class action lawyers.
Q. So at least there was some relationship that he could call upon with respect to getting some talks going.
A. That's correct.
Q. Now after Kasowitz talked to the plaintiffs' attorneys, did Kasowitz talk to you?
A. Yes. He reported back to me some of the facts.
Q. What did you find out?
A. He felt that there was maybe something there and we should have meetings and I should get involved in starting to talk to these plaintiffs' lawyers, which I next did.
Q. Okay. Mr. Kasowitz, in reporting to you, led you to believe that the main issue in those lawsuits was nicotine addiction; true?
A. True. First time I had heard that as a major element of the lawsuits.
Q. And he was telling you that nicotine addiction, smoking addiction, and the failure to warn of the

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addictive effects of smoking, were at the heart of those lawsuits; true?
A. Absolutely true.
Q. And when you heard that and fully understood the implications of that, you became concerned.
A. Absolutely correct.
Q. You became concerned for the economic viability of your company; did you not?
A. Again, yes.
Q. And by the implications attendant to that issue, you understood that if nicotine was addictive, causing smokers to become addicted to cigarettes, that the whole defense of choice might collapse like a house of cards.
A. I saw it immediately and agree with you, yes.
Q. So you instructed Mr. Kasowitz to initiate settlement negotiations with the Castano attorneys and some of the attorneys general?
A. Correct.
Q. And did you in March of 1996 research a settlement agreement with the Castano plaintiffs and at least some of the attorneys general who had brought lawsuits against Liggett?
A. Yes.
Q. The agreement in March of 1996 did not include

the state of Minnesota; did it?
A. That's correct.
Q. Attorney General Humphrey refused to settle with Liggett at that time.
A. That's correct.
Q. And what Liggett was offering to do in March of 1996 to settle those lawsuits was, among other things, to agree to the regulation of cigarettes by the FDA; true?
A. True.
Q. And was Liggett willing to make certain monetary payments to the plaintiffs, --
A. Yes.
Q. -- consistent with its ability to do so?
A. Correct.
Q. And at the time of that settlement, were you also successful in negotiating a provision of the settlement that would have facilitated to some degree the spinoff of the Nabisco company from R. J. Reynolds?
A. Correct.
Q. In March of 1996 as a major shareholder of RJR, you were still very much interested in it as a businessman in attempting to accomplish this spinoff; correct?

A. Correct.
Q. How did you manage to -- to insert a provision in the settlement agreement that would have facilitated the spinoff? What was the nature of the

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provision?
A. That if there was a merger ever, subject to the shareholders of RJR approving between Liggett and RJR, then that provision would apply to RJR.
Q. So that if Liggett merged with RJR, then RJR as an affiliate of Liggett would receive some benefits with respect to the settlement that you had negotiated.
A. Correct.
Q. And if I recall correctly, there was a provision in your settlement agreement that an affiliate of Liggett's would pay a certain amount of money at various time periods with respect to their potential liability.
A. Correct.
Q. And as far as you were concerned, you had negotiated well in terms of the amount of those payments.
A. Yes.
Q. And so you felt that it would be attractive to RJR's shareholders with respect to the possibility of

the merger between your company and RJR.
A. Made sense to me at the time, yes.
Q. So at that point in time, in March of 1996 when this settlement was negotiated in Castano and with the other attorneys general, you really didn't know what Liggett's documents said on the subject of smoking and health; did you?
A. I had not seen them at all.
Q. Because the attorneys had the documents.
A. All the attorneys had the documents, correct.
Q. Either Lathan & Watkins had the documents or Mr. Murray had the documents, and you weren't trustful of either one of them.
A. That's correct.
Q. You didn't even want either one of them to know that you were negotiating with the plaintiff and with these attorneys general; true?
A. That's true.
Q. So you had no way of determining exactly what Liggett knew and when it knew it with respect to causation, addiction, et cetera.
A. I knew nothing. I just had a gut feel with this.
Q. You had a gut feel, but you had no real evidence at that time.

A. No facts or evidence.
Q. But you had great concern with respect to the economic viability of your company?
A. That was my original motivation.
Q. And your original and continuing and main motivation in securing that settlement was economic; true?
A. At that time, yes.
Q. And it was economic not only with respect to

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getting Liggett out of the courtroom with respect to those charges in those cases, but also to achieve potentially the merger of Liggett with RJR through this provision of the settlement agreement.
A. Correct.
Q. Now was there a reaction to your settlement agreement with the Castano plaintiffs in March of 1996 on behalf of the industry and its attorneys?
A. I would call it a fire storm, not a reaction.
Q. How did Lathan & Watkins respond?
A. They fired me. I didn't have to fire them.
Q. Well, were you planning to keep them on?
A. Absolutely not.
Q. In other words, they got their letter of resignation off before you got your letter of termination out.

A. That's correct.
Q. And how about Mr. Murray, how did he react?
A. Two months later the same thing happened with him. He resigned.
Q. And what about with respect to Liggett's membership in The Tobacco Institute?
A. I think a couple of years before that we had resigned that in any -- in any event.
Q. So as far as you can recall, you weren't even in the Tobacco Institute at the time.
A. That's correct. I believe that's correct.
Q. Is it fair to say that the other members of the industry expressed outrage at the agreement that Liggett had reached with the Castano plaintiffs and those attorneys general?
A. Total outrage.
Q. Because this was the first time ever that a member of the tobacco industry had ever settled; true?
A. Correct.
Q. And you settled out of concern that you were going to lose.
A. Correct.
Q. Now did you give Kasowitz, the Kasowitz firm, any further instructions after the first settlement?

A. I -- I instructed them to retrieve all the documents from Lathan & Watkins lawyers and have all the lawyers start reviewing them.
Q. Okay. And did you ask Kasowitz to also review the internal Liggett documents that would have been found in the files of Mr. Murray and his staff?
A. Yes, told them to review all the documents. I now wanted to find out what really was going on.
Q. Now as you've already told us, the Minnesota lawsuit was still continuing.
A. That's correct.
Q. No settlement there.
A. No settlement.
Q. And in fact other lawsuits were being started by

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other attorneys general; true?
A. True.
Q. At the time that Castano was settled there was really only a handful of those lawsuits; correct?
A. That's correct.
Q. Minnesota was one of the very few that didn't settle.
A. One of two, correct.
Q. But after Castano, lawsuit after lawsuit after lawsuit was being filed by attorneys general on behalf of their states.

A. True.
Q. Now the potential liability for Liggett was several times what it had been at the time of the Castano settlement; true?
A. True.
Q. So you told the Kasowitz law firm that you wanted it to review the documents that Lathan & Watkins had and that Mr. Murray and his staff had with regard to the key issues in those pieces of litigation; true?
A. True.
Q. Now as I recall, you issued the directive to the Castano -- excuse me. You issued the directive to the Kasowitz law firm about a month or so after the settlement in Castano.
A. About that.
Q. Okay. And then it took Kasowitz several months in order to first obtain the documents, then review the documents, evaluate the documents, and report to you on the documents.
A. It took them a good four to six months.
Q. And did they provide a report to you all at once, or did they begin to provide you with periodic reports?
A. I think when they came to the final

conclusions, we sat down and they provided me a final report.
Q. So the settlement in Castano was in March of 1996?
A. Right.
Q. And so by the time that the Kasowitz law firm got going on the project, accomplished the project and was in position to report back to you, we're talking about the fall or late 1996?
A. Correct.
Q. Okay. And you sat down with these lawyers and they told you what they had found.
A. Correct.
Q. Now within a few months of that meeting, did Liggett publicly admit that cigarette smoking causes lung cancer, heart and vascular disease, and emphysema?
A. And that smoking is addictive, yes.
Q. And Liggett admitted that smoking was addictive.

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A. Correct.
Q. You have heard, I take it, at some point in time of the statistics with respect to the number of people in this country who die on an annual basis as a result of smoking-related diseases; true?
A. True.

Q. That figure is estimated at approximately 400,000 people per year; true?
A. True.
Q. Has your attorney advised you that there's been testimony in this case that 400,000 deaths per year is roughly equivalent to three 747s crashing every day with no survivors fully loaded?
A. I hadn't heard that, but I believe it.
Q. And you now realize, sir, that with respect to that type of an analogy, some of the passengers on some of those planes since 1954 had smoked Liggett cigarettes.
A. Yes.
Q. Now you mentioned that Liggett publicly acknowledged that smoking is addictive. On that subject, do you -- did you do more than simply acknowledge it?
A. Yes. We released all of our documents, waived all our privileges and, you know, and made a new settlement agreement with everybody.
Q. Now Liggett cigarettes, Chesterfield, L&Ms, Eve, Lark, --
A. Uh-huh.
A. -- they all were carrying attorney -- or they all were carrying Surgeon General warnings --

A. Right.
A. -- as of March 1997; correct?
A. Correct.
Q. But those warnings said nothing about addiction; did they?
A. That's correct.
Q. And these were warnings that stated plainly were issued by the Surgeon General; true?
A. True.
Q. The industry had always gone to great lengths to make it clear to smokers that it wasn't the industry that was issuing those warnings, but rather that it was at the behest of the Surgeon General; true?
A. True.
Q. Now, do you believe as a matter of principle, sir, that the consumers of a consumer product are entitled to know of all of the dangers of using that product of which the manufacturer has become aware?
A. Yes.
Q. You expect that type of consideration from manufacturers with regard to the consumer products that you and your family buy and use; do you not?
A. Correct.
Q. And do you believe that it is a manufacturer

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that would have more information, better information, and the most candid information with respect to the potential dangers of using a given product?
A. I would --
I believe so, yes.
Q. And up until March of 1997, no cigarette manufacturer in issuing any warning had let it be known that the warning was being issued voluntarily by the manufacturer as an expression of the information that the manufacturer had about the product; true?
A. That's true.
Q. But when you publicly admitted that Liggett cigarettes are addicting, you did put that information on the package; didn't you?
A. Right. Every one of our packs now carry a warning that smoking is addictive.
Q. Let me show you Exhibit -- I believe it's 30132.
If you could just pull that down a bit, Tara. Thank you.
Do you recognize what's on the screen?
A. Yes, I do.
MR. GILL: Your Honor, we would offer this as Exhibit 30132.
MR. WEBER: No objection.
THE COURT: Court will receive 30132.

BY MR. GILL:
Q. This is a package of Eve Lights?
A. Correct.
Q. Is this a brand that is designed with a woman smoker in mind?
A. Yes, it is.
Q. Now Liggett does not engage in advertising; does it?
A. Very little.
Q. To a limited degree?
A. Very little.
Q. All right. But anybody who buys or who bought a package of Eve cigarettes after March of 1997 would read right on the front of the package that smoking is addictive; correct?
A. Took a little bit longer than that to get it on all the packages, but as of right now, yes.
Q. And this is a warning that you put on every package of cigarettes that is sold in the United States by Liggett?
A. Correct.
Q. Do you put this warning on packages that are sold abroad?
A. We don't sell anything abroad. Liggett doesn't ship --

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Very, very little abroad.
Q. To the extent that Liggett will ever sell its cigarettes abroad, do you commit to putting that type of a warning on your packages, assuming that it comports with the law of the country in which the cigarettes are sold?
A. That's a difficult one for me to commit to. It depends on the -- on the country, it depends on the competitive nature of things. I mean the distributors may not take it. We may not ever be able to sell things. I will definitely try to put this on if it's legal and it doesn't hurt the competitive nature of things to put it on, we absolutely will.
Q. You mean there's some resistance on the part of members of a cigarette distribution system to providing smokers with information about the true risk of smoking?
A. I think in some countries that's true. It's obviously somewhat true here.
Q. Now, does this package also contain the Surgeon General's warning?
A. Yes, it does.
Q. Down on the side?
A. Yes.

Q. And that clearly identifies that as a Surgeon General's warning.
A. Correct.
Q. No such designation with regard to smoking is addictive.
A. Correct.
Q. It is apparent that that warning is being issued by the manufacturer of the product.
A. Correct.
Q. Now you're familiar with the expression "cards on the table?"
A. Yes.
Q. That's an expression that refers to knowing what you're dealing with; true?
A. True.
Q. Prior to the time that this warning was issued by Liggett, the cards weren't all on the table; were they?
A. They were not.
Q. And with respect to every other package of cigarettes that have been sold in this country prior to the time that this warning came into use, all the cards weren't on the table; were they?
A. I believe that to be true.
Q. And if the cards aren't all on the table, if you

don't know what you're dealing with, then it's pretty tough to make an informed decision with respect to whether or not you want to use a product; true?
A. I agree with that.
Q. Let me take you at this time to Exhibit 11028,

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which is at tab two.
MR. GILL: This is already admitted into evidence, Your Honor.
Q. Do you recall that there was testimony from Mr. Merryman about Exhibit 11028 earlier this afternoon?
A. Yes.
Q. This is the report by three scientists employed by the BATCo company to their superiors with respect to a trip they took to the United States in April and May of 1958.
A. Correct.
Q. Now if you turn to the next page beyond the face page -- and Tara, if you could just briefly show the whole page -- this sets forth the itinerary for the three-person team throughout April and May during the course of their visit to the United States. Do you see that?
A. Yes, I do.
Q. And these meetings apparently started on April 17th of that year. American Tobacco was the first

company that the three-person team met with, and then on the 23rd of April they met with Liggett & Myers in Durham, North Carolina. Do you see that?
A. Yes.
Q. And Dr. Felton and his colleagues met with a Dr Darkis and a Dr. Bates; correct?
A. Yes.
Q. I take it you're not familiar with either one of those gentlemen specifically.
A. No. No. I do not know who they are.
Q. And then as you heard from Mr. Merryman, there were other visits that were made including a visit to Philip Morris on the 24th of April. See that?
A. Yes.
Q. And then there were three different occasions when Dr. Felton and his group met with representatives of the TIRC, one on the 28th of April, and again on the 8th and the 10th of May.
Now are you familiar with the fact that the TIRC -- that that stands for Tobacco Industry Research Committee?
A. I don't know anything about it.
Q. Have you ever heard of an organization called the CTR?
A. That --

Q. Council for Tobacco Research?
A. Yes, I've heard of it.
Q. I want you to assume for purposes of my questions or later questions that CTR is a continuation of TIRC, that there was simply a name change that occurred in the '60s, and that TIRC was the predecessor organization of CTR. All right?
A. Okay.
Q. You understand that CTR is an organization that is supported by most of the members of the tobacco

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industry?
A. I don't think we ever did, not during my tenure that I recall.
Q. All right. But most of your competitors support CTR. Is that your understanding?
A. I guess, yes.
Q. Okay. Now if we could turn to the next page which shows page number two at the top, and then to go down about halfway to the subject matter of "'CAUSATION' OF LUNG CANCER." And the authors write that with one exception, a Dr. Greene, who was from Yale, "the individuals whom we met believed that smoking causes lung cancer if by 'causation' we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable

link." See that?
A. Yes, I do.
Q. Had anybody who represented Liggett in defending lawsuits brought by smokers ever informed you that Liggett itself had at one time in the '50s held the position that smoking caused lung cancer if by causation was meant any chain of events which led finally to lung cancer and which involved smoking as an indispensable link?
A. Not until a couple years ago, I never heard this.
Q. The language there about an indispensable link is basically a reference to smoking being a significant contributing factor in causing lung cancer; true?
A. True.
MR. WEBER: Objection, Your Honor. He's either testifying or speculating on a document.
THE COURT: Sustained.
Q. When Liggett admitted that smoking causes lung cancer, heart, vascular disease, and emphysema, did any of its competitors in the industry stand up and say, "Yes, that's true?"
A. No.
Q. Did your competitors continue to deny that

smoking causes lung cancer and those other diseases?
A. Well they have, but they signed a settlement agreement saying they were going to put that on their cigarettes, so I don't understand them.
Q. But as far as you know with respect to their public pronouncements, your competitors continue, even in the face of Liggett's admission, to take the position that it is not proven that smoking causes lung cancer.
A. I believe they're still saying that, although I think a week ago in Congress they -- they may have taken a somewhat different position. Slightly different. They seem to be changing their position as we go along.
Q. But whatever evolving position may be on the

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table now, it certainly doesn't comport with this statement by these scientists about what tobacco company research and development personnel told them in 1958; true?
A. True.
Q. And this is six years before the Surgeon General's report; isn't it?
A. Yes, it is.
Q. If you would turn to page five of this exhibit, there is a section there "ATTITUDE OF U.S. INDUSTRY

THE BIOLOGICAL TESTING." Do you see that?
A. Yes, I do.
Q. In the first sentence it indicates that Liggett & Myers stayed out of the TIRC when it was originally formed. Do you see that?
A. Yes, I do.
Q. That's been your understanding, that Liggett was not an initial member of TIRC?
A. That's my understanding.
Q. The B.A.T scientists report that "They," referring to Liggett, "remain convinced that their misgivings were justified. In their opinion TIRC has done little if anything constructive, the constantly re-iterated, quote, not proven, unquote, statements in the face of mounting contrary evidence has thoroughly discredited TIRC, and the SAB of TIRC is supporting almost without exception projects which are not related directly to smoking and lung cancer."
Did I read that correctly, sir?
A. Yes.
Q. As far as you have been able to understand, has the successor to TIRC, the CTR, also stuck to this day with the position that the case against smoking is, quote, not proven, unquote?
A. I really don't know precisely, but the industry

sure has stuck to that position, so I assume the CTR has also. I haven't followed it at all, so I don't know anything what they do.
Q. And I want you to assume that the evidence to be introduced in this case will establish that "not proven" continues to be the position of the CTR. All right?
A. Yes.
Q. Now between 1958 and 1998, are you aware that there have been hundreds, thousands of studies that have been performed with regard to the issue of whether smoking causes lung cancer and other diseases?
A. I'm not personally aware of how many studies have been done, but I assume there have been many.
Q. You're aware there has been a great deal of research on this subject.
A. Oh, you mean around the world? Yes. Yes.
Q. And that this research has continued unabated throughout the '50s, the '60s, the '70s, the '80s,

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and continues even now.
A. Yes.
Q. And that even with the benefit of the result of those 40 years of additional research, if CTR is still taking the position that the case against

smoking is, quote, not proven, unquote --
A. Personally I think it's absurd for them to take that position.
Q. That would be your assessment?
A. Absolutely.
Q. In your opinion, could any organization that purports to be based upon scientific principles continue to take a position like that, in the face of what's been learned in the last 40 years?
MR. WEBER: Objection, Your Honor. There's absolutely no foundation for Mr. LeBow as a businessman to enter that opinion.
THE COURT: Sustained.
Q. Now this same paragraph goes on to state, "Liggett felt that the problem was sufficiently serious to justify large-scale investment by the company directly in experimental research on smoke and cancer, accepting privately that a strong case against tobacco had been made and avoiding any public comment until their own research had provided something concrete to offer." Did I read that correctly?
A. Yes, you did.
Q. Did you know until just recently that the company you bought in 1986 had accepted privately,

back in the '50s, that a strong case against tobacco had been made?
A. No, I did not know this until a few months ago.
Q. Did you know until a few months ago that in the face of that recognition, Liggett had invested considerable sums of money in research during the '50s attempting to deal with the smoking-and-health issue?
A. No, I was not aware of that.
Q. This particular passage indicates that Liggett wishes to avoid any public comment on the causation issue until its research had something concrete to offer; correct?
A. That's what it says.
Q. Concrete such as a product that doesn't cause cancer, or some major event that Liggett could state dramatically reduces the risk of lung cancer from smoking.
MR. WEBER: Objection, Your Honor, on foundation.
THE COURT: No, you may answer that.
THE WITNESS: Would you repeat the question, please?
MR. GILL: Yes. Would you read it back, please, Dick?

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(Record read by the court reporter.)
A. I'm sorry, I lost you again. Can you -- can you just --
Q. Let me try to rephrase it.
A. Yes, please.
Q. Basically this sentence is stating that Liggett doesn't want to say anything on causation until Liggett has something positive it can say.
A. I don't know, positive or -- seems to say maybe positive or more information about it.
Q. Positive or remedial; correct?
A. Correct.
Q. Until Liggett is able to come to the public and report that in the face of the understanding that Liggett has reached with respect to lung cancer and their present product, that Liggett now has something safer to offer the public; true?
A. True.
Q. And Liggett has never been able to do that; has it?
A. Correct.
Q. And no cigarette company has ever been able to do that; correct?
A. A safer cigarette? Correct.
Q. No cigarette company has ever gone to the public

and said, "We now have a cigarette that you can smoke without fear of contracting lung cancer or these other diseases." True?
A. True.
Q. Do you know of any -- strike that.
Let me go back to the foundation. Remember that I mentioned that the authors of this report from spring 1958 were all scientists who worked for BATCo?
A. Correct.
Q. And you're familiar with BATCo.
A. Yes.
Q. You know that BATCo is based in London, England, that it is a company that has affiliation with many cigarette companies throughout the world; correct?
A. Correct. Yes.
Q. And its affiliate in the United States is the Brown & Williamson Tobacco Company.
A. Correct.
Q. Given that this document was authored by three scientists from BATCo, can you think of any conceivable motivation they may have had to either misstate what they were told or mislead the superiors who would be reading this document?
MR. WEBER: Objection, Your Honor, it's argumentative. And speculation.

THE COURT: Sustained.

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Q. To the extent that you would have sought an opinion from an employee at Liggett working in the research department, would you have expected your -- this employee to provide you with a true and candid account of the employee's activities if you were seeking it?
A. Yes.
Q. And you certainly wouldn't expect any of your employees to malign another tobacco company by spreading false information; would you?
MR. WEBER: Objection, Your Honor, speculation and foundation.
THE COURT: You may answer that.
A. No, I wouldn't expect -- expect them to do anything like that.
Q. All right. Could you look now at Exhibit 13677. That's at tab three, Mr. LeBow.
MR. GILL: Your Honor, this is already in evidence.
Q. This is a memorandum to a Mr. M. J. McCue from a Mr. H. D. Steele dated August 24, 1978. Do you see that?
A. Yes.
Q. And this memorandum is -- has been produced in

this case by the Brown & Williamson Company as shown at the very top of the page.
A. Uh-huh.
Q. See that?
A. Yes.
Q. And the subject matter of the memorandum is "Future Consumer Reaction to Nicotine." Do you see that?
A. Yes.
Q. So back in August of 1978, the author of this memo indicated that the purpose of the memo would be to outline his views as to how consumer attitudes toward nicotine will change in the near future. Do you see that?
A. Yes.
Q. And the author goes on to say, "In order to explain changes, I need to explain the present attitudes toward nicotine." That seems like a rational approach to take; does it not?
A. Yes.
Q. In order to explain what the future may hold, some understanding of the past and the present is needed.
A. Correct.
Q. And the author goes on, "Very few consumers are

aware of the effects of nicotine, i.e., its addictive nature and that nicotine is a poison." Did you know that back in 1978?
A. No, I did not.
Q. The author goes on to state, "Most smokers view nicotine as the number that follows the 'tar' figure

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on cigarette packs." So the author of this internal memo at Brown & Williamson brings to the attention of Mr. McCue that as far as cigarette smokers are concerned, they have little or no understanding of the effects of nicotine.
A. Correct.
Q. And that sentiment apparently comports with the view that you took on that subject all the way until 1995 when Mr. Kasowitz reported to you that the main issue in the Castano and attorney general lawsuits dealt with nicotine addiction and the failure to warn of the addictive effects of smoking, true?
A. Yes. As I say, I was -- I was a consumer, as this memo talks about; I didn't know anything about the addictive nature of nicotine or its poisonous effects.
Q. Now if someone isn't focused on the significance of a particular compound that is used in cigarettes, it's pretty unlikely that they are going to make any

decisions with regard to whether or not to use the product based on that compound; are they?
A. Uh-huh.
MR. WEBER: Objection, Your Honor. I'm not even sure that's understandable.
THE COURT: Do you understand the question?
THE WITNESS: No, I don't. Not quite.
MR. GILL: Okay.
THE COURT: Better rephrase it.
MR. GILL: Thank you, Your Honor.
Q. If a consumer isn't even aware that a particular compound that is in a product has any significance, it's not very likely that he'll take that compound into consideration in deciding whether or not to use the product; true?
A. True.
Q. They're not likely to take that compound into consideration in deciding whether or not to continue to use the product; true?
A. Absolutely.
Q. But if the compound is in fact addictive, at some point in time significant numbers of the consumers using that product are going to fall within the grip of the addiction; true?
MR. WEBER: Objection. Objection, Your

Honor. He's got no foundation and background to give that testimony.
THE COURT: Well you can answer it if you know.
A. If it's addictive, I would believe that to be true.
Q. And addiction is not something that is going to occur simply overnight; is it?
A. Some compounds maybe it does, some it doesn't. I don't know.
Q. But by the time somebody understood, if they

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understood at all, that a particular compound in a product was addictive, they might already be under the grip of the addiction.
A. True.
MR. WEBER: Objection.
Q. And as this memo points out --
THE COURT: Counsel, excuse me.
MR. GILL: I'm sorry.
MR. WEBER: Same objection, Your Honor.
THE COURT: You may answer that.
THE WITNESS: True.
Q. As this memo points out, very few consumers were even aware of the effects of nicotine with regard to its addictive nature or that it was a poison; true?

A. True.
Q. And since you now acknowledge that smoking is addictive, I take it it would be your opinion that a significant portion of the Brown & Williamson consumers that were being referenced in this memo were already addicted and didn't know it.
MR. WEBER: Objection, Your Honor.
Q. True?
MR. WEBER: Speculation and lack of foundation.
THE COURT: Sustained.
Q. I take it in your opinion it's possible to be addicted to something and not even realize it; true?
A. I believe that's true, yes.
Q. Now if someone is addicted to a product that can kill them, that consumer is in danger; true?
A. True.
Q. And if the consumer began to use the product without knowing that it might prove addictive, then the consumer didn't really know what the consumer was getting into in starting to use the product; true?
MR. WEBER: Objection, Your Honor, it's argumentative and there's no foundation.
THE COURT: Do you understand that question?

THE WITNESS: Yes, I do.
THE COURT: Okay. You can answer it.
A. True.
Q. And you understand as the owner of a tobacco company that a very large percentage of starter smokers are children under the age of 18.
A. Correct.
Q. You're familiar, are you not, Mr. LeBow, with the expression "Russian roulette?"
A. Yes.
Q. You know that that refers to the practice of spinning the chamber of a pistol, pointing it at somebody's head and pulling the trigger?
A. Yes.
Q. And if there's live ammunition in the chamber, the person may get killed, --

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A. Correct.
Q. -- depending on where the chamber comes to rest.
A. Correct.
Q. But somebody that's playing Russian roulette -- It's a very foolish thing to do; isn't it?
MR. WEBER: Objection. Your Honor, this whole line is argumentative. It's got nothing to do with this case.
THE COURT: I don't know where you're going, counsel, but --
MR. GILL: I think I can tie it up, Your Honor.
THE COURT: You better, because it does seem to becoming argumentative.
BY MR. GILL:
Q. Someone who is engaged in a game of Russian roulette can stop any time they want to; correct?
A. Yes.
Q. If you were addicted to Russian roulette and you started to spin the chamber and couldn't stop playing, if there was a live bullet in that gun, it would eventually kill you; wouldn't it?
MR. WEBER: Objection, Your Honor, it's argumentative.
THE COURT: Sustained.
Q. Now, we talked previously about alerting consumers or informing consumers about the dangers of using a product; true?
A. True.
Q. And I take it you recognize and believe that a company has a responsibility to do whatever research it should do to find out what the dangers of its products may be.
A. If it's practical, yes.

Q. If a company fails to advise consumers regarding the dangers of using a product, who is responsible if that product hurts an unknowing consumer?
A. I believe the company.
Q. Now you have testified previously, based on your personal experience, that you didn't think nicotine was addictive. That was that 1993 testimony in Broin that we discussed; correct?
A. Correct.
Q. Do you know anybody personally whom you believe has attempted to quit smoking several times but failed?
A. Yes.
Q. Who would that be?
A. My wife.
Q. How many times has she tried to quit smoking?
A. Five to ten times at least.
Q. What's the longest she was ever able to quit for?
A. A few months maybe.
Q. And every time she goes back?

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A. Every time she goes back.
Q. Did she ever discuss with you her concern that she was becoming addicted to cigarettes?
MR. WEBER: Objection. Your Honor, a few

questions were okay, now it's clear hearsay and irrelevant.
THE COURT: Sustained.
Q. Given everything that you have told us today, do you agree that in the lawsuits that Liggett successfully defended, smoker cases, that Liggett was actually liable?
MR. STRICKER: Objection, Your Honor, it calls for a legal conclusion.
THE COURT: Sustained.
Q. Has that been your privately-expressed view?
MR. STRICKER: Objection, Your Honor, same objection.
THE COURT: Well it's --
MR. STRICKER: Lack of foundation.
THE COURT: It probably would be hearsay in any case.
MR. GILL: Perhaps this, Your Honor.
Q. Do you recall, Mr. LeBow, giving such testimony under oath in this case during your deposition in this case?
A. I don't understand the question. Which testimony?
Q. Pardon me?
A. I don't understand your question.

Q. All right. Let me try to rephrase it.
A. All right.
Q. From the time that you acquired Liggett in '86, Liggett was defending lawsuits brought by smokers; correct?
A. Yes.
Q. Liggett successfully defended all those lawsuits; didn't it?
A. I recall one successful that went to trial. That's the only one I recall.
Q. Okay. Well were the others dismissed?
A. They were dismissed or pending.
Q. But you don't recall --
A. Or settled. Or settled. I'm sorry.
Q. Did --
Liggett never agreed to any settlement in a cigarette case prior to Castano; did it?
A. No.
Q. Okay. So with respect to all the cases that were occurring between 1986 and 1995, Liggett either successfully defended or the case was dismissed or the plaintiff gave up; true?
MR. STRICKER: Objection, Your Honor, asked and answered.
THE COURT: Sustained.

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Q. Since learning that cigarettes are addicting, you have acknowledged in this case, have you not, Mr. LeBow, that Liggett is probably liable to a number of those smokers?
MR. STRICKER: Objection, Your Honor, asked and answered.
THE COURT: Sustained.
Q. Now what were your reasons -- well let me strike that and lay this foundation.
In March of 1997 Liggett did finally settle with the state of Minnesota; correct?
A. Correct.
Q. And it settled with a number of others -- other attorneys general.
A. Correct.
Q. And that was a settlement that was negotiated by Mr. -- the Kasowitz law firm, but at your direction; correct?
A. Correct.
Q. And it was as part of that settlement that Liggett agreed to publicly acknowledge that cigarette smoking causes lung cancer, heart and vascular disease, and emphysema; correct?
A. Correct.
Q. Liggett also agreed as part of the settlement to

acknowledge that smoking is addictive.
A. Correct.
Q. And Liggett has kept its word with respect to making those public acknowledgments, as you've previously told me; correct?
A. Correct.
Q. Liggett was concerned about its economic viability, its economic future, with respect to the Minnesota Attorney General's lawsuit and the other lawsuits; true?
A. That was one reason.
Q. That was one of the reasons.
A. Correct.
Q. Another one of the reasons was you were able to get a provision in the settlement agreement in this case that was going to be potentially of assistance to you in your continuing proxy fight with the people at RJR; correct?
A. I no longer have a proxy fight, but that --
There's a provision in there, I would agree, but that's not important.
Q. All right. It's not important today you're saying.
A. Correct. It was not important in March, either, of '97.

Q. It wasn't important in March of '97.
A. No, it was not important then.

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Q. But it is a provision of the agreement; is it not?
A. It is a provision, correct.
Q. And I take it it is a provision of the agreement at -- at the behest of your counsel.
A. Yes. It was in the original agreement, so we continued it on in the second agreement.
Q. I take it you're aware that Liggett asked that that provision be included in the March 1997 agreement.
A. Yes.
Q. All right. So at least as of that time there was some potential there that Liggett and RJR's shareholders may have benefited from that provision.
A. Liggett or -- or RJR or any other company, any other tobacco company except Philip Morris.
Q. And how was it that Philip Morris was excluded from the potential benefits of that particular provision?
A. It was excluded on behest -- on the behest of the plaintiffs or the AGs, attorneys general.
Q. Okay. So you had an economic reason with regard to the future viability of Liggett, you had some type

of motivation with regard to the ongoing situation at RJR. Did you have any other reason for settling with the state of Minnesota and the other states in March of 1997?
A. Yes.
Q. What was that?
A. We had now seen all the documents, and I was convinced that smoking really is addictive, that smoking does -- really causes all these problems, and I don't want to have to go to court and lie about it if it ever came to that. It was absurd to take any -- to take the position that smoking doesn't cause all these problems. It's absurd today. And it was obviously the right thing and the correct thing to do to get into an economic position.
Q. So in addition to the economics and the RJR situation, you felt it was the right thing to do based upon the information that you then had.
A. Well these documents were, you know, were -- were totally things that I -- I felt and I knew, and it's about time that somebody would stand up and say it. And we did. I wanted everything out, an we released all of our documents, we waived all our attorney-client privileges and everything was released.

Q. And you knew that if there was no settlement, that you would undoubtedly wind up as a witness in this case; correct?
A. Yeah, right. Correct.
Q. And you're telling the jury that you were not about to come into this courtroom and lie to the jury.

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A. Absolutely. This courtroom or Congress or anywhere else, correct.
Q. Okay. Now did --
Has Liggett also agreed to make its ingredients -- to disclose its ingredients in its cigarettes if the state of Massachusetts enacts a law along those lines?
A. No, we've done that voluntarily. We've already done that --
Q. You've already done that.
A. -- on a voluntary basis. Has nothing to do with any law.
Q. You've disclosed all the ingredients in your cigarettes.
A. Absolutely. It's on all of our cartons.
Q. And how many of your competitors have done likewise?
A. None.

Q. Now in finishing my questions to you, Mr. LeBow, let me just take you back to 1986. You have told us today that, based upon the information that you learned from the documents, you felt that you had to come clean and that you would not lie with respect to causation or addiction; true?
A. True.
Q. Prior to the discovery that you told us about this afternoon, you had -- whenever you had addressed those issues publicly, you had adhered to the party line; had you not?
A. I'd only done that one time at deposition.
Q. But in all candor, Mr. LeBow, there is absolutely no reason why you could not have learned in 1986 what you learned in 1996; correct?
A. If I pushed the current lawyers at that time to show me all the documents, that's correct. But I did not.
Q. Because, in all candor, when you bought Liggett in '86, you had the power to set policy; correct?
A. Correct.
Q. You had the power to hire and fire management.
A. Correct.
Q. You had the power to get at the truth.
A. Correct.

Q. And at that time you didn't care about it.
A. I was told by all the lawyers that -- not to worry about it.
Q. You were focused on the potential profitability of the company, and your focus was not on smoking and health; --
A. That's correct.
Q. -- true?
Since you have admitted that smoking is addicting, Liggett's sales have declined; have they not?
A. By 50 percent.

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Q. Now to be fair here, Liggett's market share was in decline prior to the public statement about addiction; correct?
A. That's correct.
Q. But a 50 percent decline is an enormous drop in market share; is it not?
A. That's correct.
Q. Okay. And in terms of what prompted a decline of 50 percent in Liggett's market share, you have no way of knowing whether smokers who -- of Liggett products who read on the package that it was addictive took whatever measures they needed to take in order to quit; correct?

A. Correct, I have no way of knowing.
Q. That's one possibility, though; is it not?
A. Possible. Possible.
Q. Another possibility is that smokers of Liggett products who read on the package that it was addictive switched to other brands that didn't contain that warning.
A. Possible.
MR. WEBER: Objection, Your Honor. This is rank speculation.
THE COURT: Well he can -- I guess he's in a position to give us his position.
Q. And you heard the discussion in this courtroom today on the subject of denial; --
A. Yes, I did.
Q. -- did you not?
A. Yes.
Q. Rationalization?
A. Yes.
Q. Those terms refer to a situation where someone who's having a problem doesn't want to be confronted with the real problem; true?
A. True.
Q. And switching from a brand that says right on its package from the manufacturer that smoking is

addicting may well be a -- an act of rationalization in terms of switching to another brand that doesn't confront the smoker with that fact; true?
MR. WEBER: Object -- objection, Your Honor, it's now psycological testimony. No foundation.
THE COURT: Well it's -- it's pretty speculative.
Q. Then finally, Mr. LeBow, we've got the other 50 percent of Liggett's market that you still have; correct?
A. Correct.
Q. And Liggett does not advertise to youngsters; does it?
A. Absolutely not.
Q. Liggett has not engaged in any type of advertising that could conceivably have been directed

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at youngsters during the time that you've owned the company; correct?
A. Not to my knowledge.
Q. Liggett's smokers tend to be older in terms of their average age?
A. In our brands -- they're all declining. Our brands are declining at an 18-percent-a-year rate, so it's obvious our smokers are -- I shouldn't say -- I

hate to say it, but are disappearing.
Q. You're telling us that some of your smokers are dying; correct?
A. Probably, yes.
Q. And of course to the extent that some of your smokers have died, and assuming that you're not getting replacement smokers for them, that might explain part of the 50 percent drop; correct?
A. Correct. On the brands, that exactly explains it, correct.
Q. And the people who are still smoking Liggett cigarettes, even after you have told them that it's addictive, may well be smoking them because they simply cannot stop.
A. Quite possibly.
MR. WEBER: Objection, Your Honor, move to strike, pure speculation.
THE COURT: No, that's -- you may answer that. That answer will stand.
THE WITNESS: It's quite possible, yes.
MR. GILL: I have nothing further, Your Honor.
THE COURT: Why don't we recess, reconvene tomorrow morning at 9:30.
THE CLERK: Court stands in recess, to

reconvene tomorrow morning at 9:30.
(Recess taken.)

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